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# Laws Affecting the Federal Employees Health Benefits (FEHB) Program

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## Summary

For more than 50 years, the Federal Employees Health Benefits (FEHB) Program has been providing health insurance coverage to federal employees, retirees, and their dependents. It is the largest employer-sponsored health insurance program in the country, covering about 8.2 million enrollees each year.

The program was created by the Federal Employees Health Benefits Act of 1959 (FEHBA; P.L. 86-382). FEHBA and its subsequent amendments established the parameters for eligibility; election of coverage; the types of health plans and benefits that may be offered; and the level of the government's share of premiums. They also established an Employees Health Benefits Fund to pay for program expenses and put forth provisions for studies, reports, and audits. In addition, FEHBA outlined the role of the Office of Personnel Management (OPM) in FEHB. By law, OPM has the authority to contract with insurers and to prescribe regulations to manage the program, among other duties.

FEHB's general model has not changed since its inception. The program has always allowed competing private insurers to offer numerous types of coverage to enrollees within broad federal guidelines. The federal government and the employee or retiree have always shared the cost of the premium, and generally employees and retirees have had access to the same plans at the same cost. However, specific features of FEHB have been modified—in some cases, multiple times—by statutory changes, administrative actions, and judicial decisions. For example, through legislation, Congress has modified the formula for determining the government's share of premiums, and both Congress and OPM have broadened the types of health benefits FEHB plans must provide. Additionally, a Supreme Court decision in 2013 expanded FEHB eligibility to include same-sex spouses of FEHB enrollees and the children of same-sex marriages.

Congress has financial and administrative interests in the program, as the government pays for a share of FEHB premiums and Congress has the legislative authority to modify FEHB. Congressional interest in the program also extends to FEHB's potential applicability as a model for other health care programs or as an avenue to provide coverage, such as by extending aspects of FEHB to Medicare.

This report tracks legislative changes to FEHB. The report includes brief discussions of how Congress has changed FEHB through legislative action, including by restricting the use of federal funds; changing the formula for determining the government's share of FEHB premiums; expanding eligibility for the program; and implementing policies that affect the relationship between Medicare and FEHB. The **Appendix** includes detailed summaries of selected laws or provisions of laws that have amended or changed FEHB.

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## Introduction

The Federal Employees Health Benefits (FEHB) Program provides private health insurance to federal employees, retirees, and their dependents. It provides more than \$40 billion in health care benefits annually. In a typical year, FEHB provides health insurance coverage to about 8.2 million federal employees, retirees,<sup>1</sup> and their dependents.<sup>2</sup> Participation in FEHB is voluntary. About 85% of federal employees participate, and about 90% of retirees participate.<sup>3</sup>

Coverage options available to eligible individuals include individual or family coverage in an approved health benefits plan. Beginning in calendar year 2016, individuals will have a third coverage option: self plus one coverage for themselves and one eligible family member.<sup>4</sup> Generally, available health benefits plans fall into two broad categories: fee-for-service (FFS) or health maintenance organizations (HMOs). FFS plans tend to be available nationwide, and HMOs tend to be available locally. Premiums are shared between the federal government and the employee or retiree. Benefits and cost sharing vary among FEHB plans, but all plans must cover basic services such as hospital and physician care and may require cost sharing in the form of deductibles, co-payments, or coinsurance.

Prior to the creation of FEHB in 1959, federal employees were not able to obtain health insurance through the federal government; instead, federal employees who wanted health insurance could purchase coverage voluntarily on their own or through the few union and employee association plans that offered plans to federal employees.<sup>5</sup> By 1950, it was common for employers in the private sector to offer health insurance and pay at least a portion of their employees' health insurance premiums. As early as 1951, President Truman's Commission on the Health Needs of the Nation recommended that the federal government offer health insurance coverage for its employees.<sup>6</sup> After debate on whether and how the government should pursue this option, Congress passed the Federal Employees Health Benefits Act of 1959 (FEHBA; P.L. 86-382).<sup>7</sup>

FEHBA generally established parameters for eligibility; election of coverage; the types of health plans and benefits that may be offered; and the level of the government's share of premiums. It also established an Employees Health Benefits Fund to pay for program expenses and put forth provisions for studies, reports, and audits. In addition, FEHBA outlined the role of the Office of Personnel Management (OPM).<sup>8</sup> By law, OPM has the authority to contract with insurers and to prescribe regulations to manage FEHB, among other duties.<sup>9</sup>

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<sup>1</sup> In the statute governing the Federal Employees Health Benefits (FEHB) Program, retirees are referred to as *annuitants*. This report will use the term *retirees*.

<sup>2</sup> Office of Personnel Management (OPM), "OPM Announces 2015 Federal Employees Health Benefits Program Premium Rates," news release, October 7, 2014, at <http://www.opm.gov/news/releases/2014/10/opm-announces-2015-federal-employees-health-benefits-program-premium-rates/>.

<sup>3</sup> *Ibid.*

<sup>4</sup> See the summary of P.L. 113-67 in the **Appendix** for more details.

<sup>5</sup> U.S. Congress, House Committee on Post Office and Civil Service, *The Federal Employees Health Benefits Program: Possible Strategies for Reform*, committee print, prepared by Congressional Research Service, 101<sup>st</sup> Cong., 1<sup>st</sup> sess., CP 101-5 (Washington: GPO, 1989).

<sup>6</sup> Odin W. Anderson and J. Joel May, *The Federal Employees Health Benefits Program, 1961-1968: A Model for National Health Insurance?* (Chicago: University of Chicago, 1971), p.3.

<sup>7</sup> *Ibid.*

<sup>8</sup> Until the passage of the Civil Service Reform Act of 1978 (P.L. 95-454), OPM was known as the Civil Service (continued...)

FEHBA has been amended many times since its passage. The general model of FEHB, consisting of enrollees choosing between multiple types of coverage offered by competing private insurers, has not changed. Employees and retirees have always shared the cost of premiums with the federal government, and, in general, they have always had access to the same plans at the same cost.<sup>10</sup>

However, many other aspects of FEHB have been modified. For example, the formula for determining the government's share of premiums has changed several times, and the government's share of premiums generally has increased. In addition, eligibility, services, and benefits generally have been expanded in a number of ways. Congress, in its legislative authority, often has some part in modifying FEHB, either in proposing changes to the program or reacting to proposed changes.

## **Interest in FEHB**

Since FEHB's inception, policymakers and researchers have been interested in the program both as a model for private and public health insurance programs (e.g., Medicare) and as an avenue for expanding coverage to certain individuals (e.g., the uninsured).<sup>11</sup> The FEHB model consists of competing insurers providing numerous types of coverage to enrollees with minimal intervention from OPM. Many view this model as generally successful in giving enrollees the opportunity to make cost-conscious choices and in constraining the program's overall cost growth.

For this reason, researchers have looked into exporting aspects of the FEHB model to other health care programs, such as Medicare.<sup>12</sup> Others have considered expanding access to FEHB or creating new programs modeled after FEHB to provide coverage to individuals who are not federal workers or retirees, such as small business employees or the uninsured.<sup>13</sup> Some policymakers

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Commission. For the sake of clarity, in this report the term *OPM* is used even in the years prior to the change.

<sup>9</sup> For more information about OPM's authority within FEHB, see CRS Report R43922, *Federal Employees Health Benefits (FEHB) Program: An Overview*, by Kirstin B. Blom and Ada S. Cornell.

<sup>10</sup> Certain plans offered in FEHB are available only to certain types of employees and retirees. For example, the Foreign Service Benefit Plan is available only to employees and retirees who are American Foreign Service personnel. Non-postal employees and all retirees pay the same premium for plans; however, postal employees have collective bargaining rights and, historically, the Postal Service's contribution to premiums for postal employees has been higher than contributions for all other employees and retirees.

<sup>11</sup> For examples of the various policymakers, including Members of Congress, Presidents, and presidential candidates, who have expressed interest in FEHB as a model for other programs or in expanding access to FEHB, see the following discussions: Walton Francis, *Putting Medicare Consumers in Charge* (Washington D.C.: The AEI Press, 2009), pp. 3-6; Beth C. Fuchs, *Increasing Health Insurance Coverage Through An Extended Federal Employees Health Benefits Program*, The Commonwealth Fund, December 2000, pp. 6-8, at [http://www.commonwealthfund.org/usr\\_doc/fuchs2\\_workable\\_414.pdf](http://www.commonwealthfund.org/usr_doc/fuchs2_workable_414.pdf).

<sup>12</sup> The extent of support among policymakers and researchers for exporting FEHB concepts to Medicare varies. For example, see Stuart M. Butler and Robert E. Moffit, "The FEHB As A Model for A New Medicare Program," *Health Affairs*, vol. 14, no. 4 (Winter 1995), pp. 47-61; Karen Davis, Barbara S. Cooper, and Rose Capasso, *The Federal Employee Health Benefits Program: A Model for Workers, Not Medicare*, The Commonwealth Fund, November 2003; Roger Feldman, Kenneth E. Thorpe, and Bradley Gray, "The Federal Employees Health Benefits Plan," *Journal of Economic Perspectives*, vol. 16, no. 2 (Spring 2002), pp. 207-217; Walton Francis, *Putting Medicare Consumers in Charge* (Washington D.C.: The AEI Press, 2009); Mark Merlis, *The Federal Employees Health Benefits Program: Program Design, Recent Performance, and Implications for Medicare Reform*, Kaiser Family Foundation, May 2003.

<sup>13</sup> Stan Dorn and Jack A. Meyer, *Nine Billion Dollars a Year to Cover the Uninsured: Possible Common Ground for Significant, Incremental Process*, Economic and Social Research Institute, October 2002; Beth C. Fuchs, *Increasing* (continued...)

have embraced these ideas, introducing legislation to create new programs or to expand FEHB eligibility.<sup>14</sup> In the past, it also has been suggested that certain features of FEHB are a good model for state-level health insurance exchanges.<sup>15</sup> In addition, some have said that lessons learned from FEHB may have been instructive for state and federal officials establishing the health insurance exchanges created by the Patient Protection and Affordable Care Act (ACA; P.L. 111-148, as amended).<sup>16</sup>

Congressional interest in FEHB often extends beyond FEHB's potential applicability as a model for other health care programs or as an avenue to provide coverage. Congressional policymakers have some responsibility for FEHB's viability and sustainability. Congress has a financial interest in the program, as the federal government has always paid a portion of FEHB's costs. In addition, Congress has the legislative authority to restructure FEHB to maintain or improve its function.

## Scope of Report

The purpose of this report is to provide information that both helps to explain how FEHB has evolved into the program it is today and details how Congress has interacted with FEHB in the past. The report includes short discussions of certain changes to the program. It discusses how Congress has conditioned the use of federal funds on policy changes being implemented in FEHB (**Table 1**); changed the formula for determining the government's share of FEHB premiums (**Table 2**); modified eligibility for the program (**Table 3**); and implemented policies that affect the relationship between Medicare and FEHB (**Table 4**). In addition, the **Appendix** contains a summary of the enacting FEHB legislation and a chronological list of summaries of selected laws that have since amended or otherwise affected FEHB.

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*Health Insurance Coverage Through An Extended Federal Employees Health Benefits Program*, The Commonwealth Fund, December 2000, pp. 6-8.

<sup>14</sup> For example, in the 112<sup>th</sup> Congress legislation was introduced to enroll Medicare beneficiaries in FEHB and to sunset the Medicare program (S. 2196) and also to open up FEHB to individuals who are not federal employees or retirees (H.R. 429).

<sup>15</sup> See, for example, Robert E. Moffit, *State-Based Health Reform: A Comparison of Health Insurance Exchanges and the Federal Employees Health Benefits Program*, The Heritage Foundation, No. 1515, June 20, 2007, at [http://hss.state.ak.us/hspc/files/200710\\_state\\_fedbenefit.pdf](http://hss.state.ak.us/hspc/files/200710_state_fedbenefit.pdf).

<sup>16</sup> Timothy D. McBride, Abigail R. Barker, Lisa M. Pollack, et al., "Federal Employees Health Program Experiences Lack of Competition in Some Areas, Raising Cost Concerns for Exchange Plans," *Health Affairs*, vol. 31, no. 6 (June 2012), pp. 1321-1328.

### **Information Not Included in This Report**

This report includes summaries of laws or provisions of laws that have directly amended or otherwise caused policy changes to FEHB. The report does not summarize any laws or provisions of laws that may apply generally, rather than specifically, to FEHB. For example, the Health Insurance Portability and Accountability Act of 1996 (HIPAA; P.L. 104-191) includes provisions that apply generally to group health plans. Although FEHB plans typically meet the definition of *group health plan* under HIPAA and OPM requires FEHB plans to comply with HIPAA provisions, HIPAA does not specifically apply to FEHB and is not summarized in this report.

This report does not cover any changes made to FEHB by OPM. Statute gives OPM broad authority to administer FEHB, and in exercising that authority OPM can implement changes to the program.<sup>17</sup> For example, OPM issues call letters to FEHB plans each year that outline OPM's policy goals for the upcoming year. In the call letter for the 1990 contract year, OPM used its authority to require all plans to include coverage of prescription drugs.<sup>18</sup> Subsequent call letters have expanded and modified OPM's prescription drug requirements. In another example, in 2012 OPM issued an interim final rule that extended FEHB eligibility to temporary federal firefighters.<sup>19</sup> OPM has indicated that doing so was within its authority to include or exclude employees in FEHB.<sup>20</sup>

Additionally, this report does not cover changes to FEHB that result from judicial decisions. For example, on June 26, 2013, the Supreme Court ruled Section 3 of the Defense of Marriage Act (DOMA; P.L. 104-199) unconstitutional. Due to this ruling, same-sex spouses of FEHB enrollees are now eligible for benefits available to opposite-sex spouses of FEHB enrollees and the children of same-sex marriages will be treated in the same manner as those of opposite-sex marriages.

Finally, this report does not summarize laws that provide technical clarifications, non-substantive grammatical changes, or name changes to FEHB.

## **Placing Conditions on the Use of Federal Funds**

Congress can place conditions on the use of federal funds, and it has done so to make changes to FEHB. For example, in 1983 Congress passed a law that prohibited using appropriated federal funds to cover abortions, except when the life of the woman was in danger.<sup>21</sup> This provision was renewed with few changes every year except 1994 and 1995, when the 103<sup>rd</sup> Congress excluded the provision. The reinstated provision prohibited the use of funds except when the life of the woman was in danger or in cases of rape or incest; this provision has been included in subsequent appropriations bills each year (as of the date of this report).<sup>22</sup>

<sup>17</sup> In at least one instance, Congress has acted to block the implementation of a policy change by OPM. See P.L. 102-393 in the **Appendix** for more details.

<sup>18</sup> FEHB Program Carrier Letter, March 30, 1989.

<sup>19</sup> The interim final rule was published in 77 *Federal Register* 42417, July 17, 2012. The final rule was published October 17, 2014, in 79 *Federal Register* 62325. See OPM, "Federal Employees Health Benefits Program Modification of Eligibility to Certain Employees on Temporary Appointments and Certain Employees on Seasonal and Intermittent Schedules, 79 *Federal Register* 62325, October 17, 2014, at <http://www.gpo.gov/fdsys/pkg/FR-2014-10-17/pdf/2014-24652.pdf>.

<sup>20</sup> Letter from John Berry, Director of OPM, to the Honorable Tom Coburn, Senator, August 3, 2012.

<sup>21</sup> This legislative restriction on FEHB funds followed an earlier administrative attempt by OPM to eliminate non-life-saving abortion coverage. Federal employee unions challenged OPM's actions, and a federal district court later concluded that the agency acted outside the scope of its authority. In *American Federation of Government Employees v. AFL-CIO*, 525 F.Supp. 250 (1981), the court found that absent a specific congressional statutory directive, there was no basis for OPM's actions.

<sup>22</sup> For further analysis of legislation related to coverage for abortion, see CRS Report RL33467, *Abortion: Judicial History and Legislative Response*, by Jon O. Shimabukuro.

**Table 1** summarizes laws that have enacted policy changes to FEHB by placing conditions on the use of federal funds.

**Table 1. Laws That Have Placed Conditions on the Use of Federal Funds for FEHB**

Year	Authorizing Statute	Change in How Federal Funds May Be Used in FEHB
1983	A Joint Resolution Making Further Continuing Appropriations for the Fiscal Year 1984 (P.L. 98-151)	Restricted use of funds to pay for abortions or administrative expenses for any FEHB plan that provides benefits or coverage for abortions, except when the life of the woman is in danger  Provision has been applied to FEHB every year except 1994 and 1995; since 1996 the provision has included an exception for cases of rape and incest
1992	Treasury, Postal Service, and General Government Appropriations Act, 1993 (P.L. 102-393)	Prohibited use of funds appropriated by the act to implement changes proposed by OPM that would affect Medicare beneficiaries
1997	Assisted Suicide Funding Restriction Act of 1997 (P.L. 105-12)	Prohibited use of federal funds for benefits and services related to assisted suicide and prohibited OPM from contracting with plans that include coverage for these benefits and services
1998	Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (P.L. 105-277)	Required all FEHB plans to cover contraceptives, with the exception of certain plans that object to such coverage on the basis of religious beliefs  Provision has been applied to FEHB every year since 1999

**Source:** Congressional Research Service (CRS) analysis of selected legislation.

**Note:** FEHB = Federal Employees Health Benefits Program; OPM = Office of Personnel Management.

## Setting the Government Share of Premiums

Over the years, the government’s share of premiums has increased overall. In the legislation that created FEHB, the government’s share was set at 50% of the premium and had to fall within a specified dollar range. That provision changed very little until 1971, when the “big six” formula was created. The formula was equal to the simple average of the premiums of six health plans offered in FEHB that met the criteria specified in statute. The government’s share originally was set at 40% of the simple average of the big six premiums, and it increased to 50% in 1974.

The big six formula was in place with few changes until 1997. Passage of the Balanced Budget Act of 1997 (P.L. 105-33) introduced the formula for setting the government’s share of premiums that is in effect today. The government contributes 72% of the weighted average premium of all plans, not to exceed 75% of the premium for any one plan (calculated separately for individual and family coverage).

**Table 2. Laws That Have Changed the Government’s Share of the Premium**

Passed	Authorizing Statute	Change in the Government’s Share of the Premium
1959	Federal Employees Health Benefits Act of 1959 (P.L. 86-382)	Set the government’s share of premiums at 50% of the lowest rate charged by a carrier  Required the government’s share to fall in a specified dollar range that differed depending on plan type (individual or family) and the enrollee’s gender and family situation
1964	To Amend the Federal Employees Health Benefits Act of 1959 to Remove Certain Inequities in the Application of Such Act, to Improve the Administration Thereof, and for Other Purposes (P.L. 88-284)	Made the government’s share of premiums the same for all enrollees according to plan type (individual or family), regardless of gender and family situation
1966	Federal Salary and Fringe Benefits Act of 1966 (P.L. 89-504)	Changed the government’s share of premiums from falling in a specified dollar range to a fixed dollar amount
1970	To Increase the Contribution by the Federal Government to the Cost of Health Benefits Insurance, and for Other Purposes (P.L. 91-418)	Altered the determination of the government’s share of premiums by creating the “big six” formula, calculated separately for individual and family plans  Set the government’s share at 40% of the simple average of premiums for the six health plans <sup>a</sup>
1974	To Increase the Contribution of the Government to the Costs of Health Benefits for Federal Employees, and for Other Purposes (P.L. 93-246)	Increased the government’s share of the FEHB plan premium from 40% to 50% of the simple average of the big six premiums  Set the maximum government share at 75% of the total premium for any one plan
1989	Relating to the Method by Which Government Contributions to the Federal Employees Health Benefits Program Shall Be Computed for 1990 or 1991 If No Government-Wide Indemnity Benefit Plan Participates in That Year (P.L. 101-76)	Adjusted the big six formula to account for the absence of one of the plan types specified in the formula
1990	Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508)	Extended the restructured big six formula for calculating the government’s share of premiums through 1993
1993	Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66)	Extended the restructured big six formula for calculating the government’s share of premiums through 1998 (with modifications for contract years 1997 and 1998)
1997	Balanced Budget Act of 1997 (P.L. 105-33)	Modified the formula for determining the government’s share of premiums by requiring OPM to determine the weighted average premium of all plans in FEHB each year, calculated separately for individual and family plans  Required that the biweekly government share of a premium is equal to 72% of this average, not to exceed 75% of any given plan’s premium

**Source:** CRS analysis of selected legislation.

- a. The six health plans in P.L. 91-418 are the “service benefit plan; the indemnity benefit plan; the two employee organization plans with the largest number of enrollments, as determined by the Commission; and the two comprehensive medical plans with the largest number of enrollments, as determined by the Commission.”

## Eligibility

FEHB-eligible participants specified in the enacting legislation included current federal employees and retirees who retired *after* July 1, 1960.<sup>23</sup> Family members of employees and retirees also were eligible. (See the text box, “Eligibility Under the Federal Employees Health Benefits Act (P.L. 86-382),” for a complete list of eligibility under the enacting legislation.) Since FEHBA’s enactment, eligibility to enroll in FEHB generally has been extended to more categories of federal employees, retirees, and their current and former family members.<sup>24</sup>

### Eligibility Under the Federal Employees Health Benefits Act of 1959 (P.L. 86-382)

Specifically, the enacting legislation provided that the following individuals were eligible for FEHB:

- any appointed or elected officer or employee in the executive, judicial, or legislative branch of the federal government, including a government-owned or controlled corporation (except any corporation under the supervision of the Farm Credit Administration)
- any appointed or elected officer or employee of the municipal government of the District of Columbia
- employees of Gallaudet College
- annuitants who retire on an immediate annuity after 12 or more years of service or for a disability and who were enrolled in an FEHB plan for at least 5 years immediately prior to retirement or enrolled from the earliest opportunity to do so
- a family member who receives an immediate annuity as the survivor of a retiree or employee who dies after completing five or more years of service
- an employee who receives monthly compensation under the Federal Employees’ Compensation Act (FECA; P.L. 64-267) as a result of a work-related injury or illness and who is determined by the Secretary of Labor to be unable to return to duty
- a family member who receives monthly compensation under FECA as the surviving beneficiary of an employee who has sustained work-related injuries or illnesses
- an employee’s or retiree’s spouse
- an employee’s or retiree’s unmarried child under the age of 19, including an adopted child, a stepchild, and a recognized natural child who lives with the employee or retiree in a regular parent-child relationship
- an employee’s or retiree’s unmarried child who, regardless of age, is incapable of self-support because of mental or physical incapacity that existed prior to the child reaching the age of 19 years

In 1978, FEHB was extended to part-time employees, and in 1988 it was extended to certain temporary workers. In 1988, Congress also authorized temporary continuation of coverage (TCC), whereby employees separated from service for reasons other than gross misconduct can continue coverage in FEHB.<sup>25</sup> TCC enrollees must pay the entire FEHB premium, both the

<sup>23</sup> In 1960, Congress passed the Retired Federal Employees Health Benefits Act (P.L. 86-724), which authorized the creation of a health benefits program for federal employees who retired or became disabled *before* July 1, 1960, and their family members. In 1974, Congress passed An Act to Increase the Contribution of the Government to the Costs of Health Benefits for Federal Employees, and for Other Purposes (P.L. 93-246), which allowed those retirees and their family members to participate in FEHB. This report does not include summaries of legislation or provisions of legislation that affect only employees who retired or became disabled before July 1, 1960.

<sup>24</sup> As a summary of laws affecting FEHB, this report does not cover changes made to FEHB eligibility by the Supreme Court. This includes the June 26, 2013, decision that ruled §3 of the Defense of Marriage Act (DOMA) unconstitutional and expanded FEHB eligibility to include same-sex spouses and children of same-sex marriages.

<sup>25</sup> Temporary continuation of coverage (TCC) mirrors coverage created under Title X of the Consolidated Omnibus (continued...)

government's and the employees' shares, as well as a 2% administrative fee. In general, TCC is available to separating employees and their dependents for up to 18 months after the date of separation. However, there are exceptions, such as the availability of 36 months of coverage for children aging out of their parents' plans.

**Table 3. Laws That Have Affected Eligibility for FEHB**

	<b>Authorizing Statute</b>	<b>Change in Eligibility for FEHB</b>
1959	Federal Employees Health Benefits Act of 1959 (P.L. 86-382)	Authorized coverage for federal employees, retirees who retired after July 1, 1960, <sup>a</sup> dependents of employees and retirees, and other specified individuals <sup>b</sup>
1960	Postal Employees Salary Increase Act of 1960 (P.L. 86-568)	Authorized coverage for Agriculture Stabilization and Conservation County Committee employees and their dependents
1964	To Amend the Federal Employees Health Benefits Act of 1959 to Remove Certain Inequities in the Application of Such Act, to Improve the Administration Thereof, and for Other Purposes (P.L. 88-284)	Authorized coverage for employees receiving compensation because of work-related injury, foster children, and unmarried children up to the age of 21
1964	To Bring Certain United States Commissioners Within the Purview of the Federal Employees Health Benefits Act of 1959 and the Federal Employees' Group Life Insurance Act of 1954 (P.L. 88-531)	Authorized coverage for certain United States commissioners and their dependents
1964	To Amend the Federal Employees Health Benefits Act of 1959 So as to Authorize Certain Teachers Employed by the Board of Education of the District of Columbia to Participate in a Health Benefits Plan Established Pursuant to Such Act, to Amend the Federal Employees Group Life Insurance Act of 1954 So as to Extend Insurance Coverage to Such Teachers, to Provide for Retroactive Salary Increases for Certain Civilian Employees of the Federal Government, and for Other Purposes (P.L. 88-631)	Authorized coverage for teachers in the District of Columbia who had been temporarily employed as teachers for a total of at least two years
1966	To Preserve the Benefits of the Civil Service Retirement Act, the Federal Employees Group Life Insurance Act of 1954, and the Federal Employees Health Benefits Act of 1959 for Congressional Employees Receiving Certain Congressional Staff Fellowships (P.L. 89-379)	Authorized coverage for congressional staff receiving certain congressional staff fellowships
1966	Federal Salary and Fringe Benefits Act of 1966 (P.L. 89-504)	Authorized coverage for dependent children aged 21 to 22  Permitted certain employees on leave without pay to continue or acquire coverage

(...continued)

Budget Reconciliation Act of 1985 (COBRA; P.L. 99-272), which provides similar protections for private sector employees. For more information about COBRA, see CRS Report R40142, *Health Insurance Continuation Coverage Under COBRA*, by Janet Kinzer.

<b>Authorizing Statute</b>		<b>Change in Eligibility for FEHB</b>
1968	National Guard Technicians Act of 1968 (P.L. 90-486)	Authorized coverage for National Guard technicians and their dependents
1968	Federal Magistrates Act (P.L. 90-578)	Authorized coverage for United States magistrates, their clerical and secretarial assistants, and their dependents
1969	Foreign Assistance Act of 1969 (P.L. 91-175)	Authorized coverage for employees during a period of transfer to employment with an international organization
1970	To Increase the Contribution by the Federal Government to the Cost of Health Benefits Insurance, and for Other Purposes (P.L. 91-418)	Authorized coverage for (1) family members who received an immediate annuity as the survivor of an employee or of a retired employee in the event that the deceased had completed less than five years of creditable service; (2) noncitizen employees whose permanent duty station is in the Panama Canal Zone
1971	Intergovernmental Personnel Act of 1970 (P.L. 91-648)	Authorized coverage for federal employees assigned to state or local governments  Authorized coverage for state or local government employees assigned to an executive agency in the federal government
1973	To Extend Civil Service Federal Employees Group Life Insurance and Federal Employees Health Benefits Coverage to United States Nationals Employed by the Federal Government (P.L. 93-160)	Authorized coverage for nationals of the United States employed at permanent duty stations outside the United States and the Panama Canal Zone who are otherwise eligible for FEHB
1976	To Amend Title 5, <i>United States Code</i> , to Restore Eligibility for Health Benefits Coverage to Certain Individuals Whose Survivor Annuities Are Restored (P.L. 94-342)	Authorized coverage for a surviving spouse when the survivor annuity was terminated because of remarriage and allowed the surviving spouse to reenroll in FEHB if the survivor annuity is restored
1978	Federal Employees Part-Time Career Employment Act of 1978 (P.L. 95-437)	Authorized coverage for part-time career employees and their dependents
1978	To Amend Subchapter III of Chapter 83 of Title 5, <i>United States Code</i> , to Provide That Employees Who Retire After Five Years of Service, in Certain Instances, May Be Eligible to Retain Their Life and Health Insurance Benefits, and for Other Purposes (P.L. 95-583)	Reduced the length of creditable service required by a retiring employee to retain FEHB coverage into retirement from 12 years to 5 years
1979	To Make Certain Technical and Clerical Amendments to Title 5, <i>United States Code</i> (P.L. 96-54)	Redefined <i>employee</i> for the purpose of FEHB coverage to exclude the previous reference to United States commissioners
1979	Panama Canal Act of 1979 (P.L. 96-70)	Excluded individuals from FEHB who were not citizens or nationals of the United States and whose permanent duty station was outside the United States, <i>unless</i> the individual was an employee on September 30, 1979, by reason of service in specified government agencies
1980	To Amend Provisions of Chapters 83 and 89 of Title 5, <i>United States Code</i> , Which Relate to Survivor Benefits for Certain Dependent Children, and for Other Purposes (P.L. 96-179)	Eliminated the “lives with” requirement for a natural child to be covered by FEHB and added a dependency requirement for all children
1984	Civil Service Retirement Spouse Equity Act of 1984 (P.L. 98-615)	Authorized coverage for former spouses of employed, retired, or separated federal employees

	<b>Authorizing Statute</b>	<b>Change in Eligibility for FEHB</b>
1985	To Amend Title 5, <i>United States Code</i> , to Provide That Employee Organizations Which Are Not Eligible to Participate in the Federal Employees Health Benefits Program June 17, 1985, Solely Because of the Requirement That Applications for Approval Be Filed Before January 1, 1980, May Apply to Become So Eligible, and for Other Purposes (P.L. 99-53)	Permitted certain disability annuitants who were later restored to federal employment to enroll in an FEHB plan if they had been enrolled in any such plan immediately prior to termination of employment
1986	Federal Employees Benefits Improvement Act of 1986 (P.L. 99-251)	Gave OPM the authority to waive the five years of service requirement for individuals to have FEHB coverage in retirement in cases of exceptional circumstances
1986	Federal Employees' Retirement System Act of 1986 (P.L. 99-335)	Authorized coverage for individuals first employed by the District of Columbia government before October 1, 1987
1986	Intelligence Authorization Act for Fiscal Year 1987 (P.L. 99-569)	Authorized coverage for certain former spouses of Central Intelligence Agency (CIA) employees
1987	Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (P.L. 100-204)	Authorized coverage for certain former spouses of employees or former employees of the Foreign Service
1988	Making Technical Corrections Relating to the Federal Employees' Retirement System, and for Other Purposes (P.L. 100-238)	Declared that certain nonfederal employees eligible for FEHB benefits are no longer entitled to such benefits after October 1, 1988
1988	Federal Employees Health Benefits Amendments Act of 1988 (P.L. 100-654)	Created temporary continuation of coverage (TCC) in FEHB whereby federal employees separated from service and certain dependents can maintain FEHB  Directed OPM to prescribe regulations offering FEHB to certain temporary federal employees
1988	Office of Federal Procurement Policy Act Amendments of 1988 (P.L. 100-679)	Authorized coverage for certain individuals employed by former Presidents and Vice Presidents
1990	Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (P.L. 101-246)	Authorized coverage for former spouses of certain former Foreign Service employees in certain circumstances
1990	Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (P.L. 101-513)	Authorized coverage for U.S. hostages in Iraq, Kuwait, and Lebanon, and their family members, while they remained in hostage status and for 12 months thereafter
1990	To Amend Title 5, <i>United States Code</i> , to Provide Relief from Certain Inequities Remaining in the Crediting of National Guard Technician Service in Connection with Civil Service Retirement, and for Other Purposes (P.L. 101-530)	Provided that post-1968 service by National Guard technicians is not a required prerequisite for entitlement to FEHB
1991	Intelligence Authorization Act, Fiscal Year 1991 (P.L. 102-88)	Provided that a former spouse of a CIA employee who is not eligible to enroll or continue enrollment in an FEHB plan solely because of remarriage before the age of 55 may enroll in an FEHB plan under certain circumstances
1991	Legislative Branch Appropriations Act, 1992 (P.L. 102-90)	Authorized coverage for employees of the Senate Employee Child Care Center

<b>Authorizing Statute</b>		<b>Change in Eligibility for FEHB</b>
1992	National Defense Authorization Act for Fiscal Year 1993 (P.L. 102-484)	Provided for special rules with regard to TCC under FEHB if the basis for TCC is involuntary separation from a position in or under the Department of Defense due to a reduction in force
1994	FEGLI Living Benefits Act, 1994 (P.L. 103-409)	Authorized coverage for employees of the Office of the Comptroller of the Currency and the Office of Thrift Supervision whose health coverage, provided under their organizations' plans, terminates
1996	National Defense Authorization Act for Fiscal Year 1996 (P.L. 104-106)	Allowed individuals who separate from certain positions in or under the Department of Defense or the Department of Energy to continue coverage under FEHB and be liable for no more than the employee's share of FEHB premiums
1996	Omnibus Consolidated Appropriations Act, 1997 (P.L. 104-208)	Required OPM to prescribe regulations under which surviving children whose survivor annuity was terminated because of marriage and is later restored (because the marriage ends) may enroll in an FEHB plan
1998	Federal Employees Health Care Protection Act of 1998 (P.L. 105-266)	Authorized coverage for employees of the Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve Board whose health coverage, provided under their organizations' plans, terminates
1998	District of Columbia Courts and Justice Technical Corrections Act of 1998 (P.L. 105-274)	Authorized coverage for District of Columbia public defender service employees
2000	Federal Employees Health Benefits Children's Equity Act of 2000 (P.L. 106-394)	Mandated that federal employees legally required to provide health insurance coverage to a dependent child do so under FEHB, if the child does not otherwise have coverage
2000	District of Columbia Appropriations Act, 2001 (P.L. 106-522)	Authorized coverage for certain employees of the District of Columbia
2002	To Amend Title 5, <i>United States Code</i> , to Allow Certain Catch-Up Contributions to the Thrift Savings Plan to Be Made by Participants Age 50 or Over; to Reauthorize the Merit Systems Protection Board and the Office of Special Counsel; and for Other Purposes (P.L. 107-304)	Authorized coverage for employees of the Overseas Private Investment Corporation (OPIC) when OPIC-administered plans terminate
2004	State Justice Institute Reauthorization Act of 2004 (P.L. 108-372)	Authorized coverage for State Justice Institute employees who began employment on or after October 1, 1988
2004	Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (P.L. 108-375)	Provided for special rules for TCC under FEHB for certain federal employees
2007	To Amend Chapter 89 of Title 5, <i>United States Code</i> , to Make Individuals Employed by the Roosevelt Campobello International Park Commission Eligible to Obtain Federal Health Insurance (P.L. 110-74)	Authorized coverage for U.S. citizens employed by the Roosevelt Campobello International Park Commission
2008	To Provide for Certain Federal Employee Benefits to Be Continued for Certain Employees of the Senate Restaurants After Operations of the Senate Restaurants Are Contracted to Be Performed by a Private Business Concern, and for Other Purposes (P.L. 110-279)	Permitted specified Senate Restaurants employees working under the Architect of the Capitol to elect to continue coverage under FEHB after operations of the Senate Restaurants are contracted out

	<b>Authorizing Statute</b>	<b>Change in Eligibility for FEHB</b>
2008	National Aeronautics and Space Administration Authorization Act of 2008 (P.L. 110-422)	Provided for special rules for TCC under FEHB for employees who are terminated or separated from certain positions at the National Aeronautics and Space Administration
2010	Patient Protection and Affordable Care Act (P.L. 111-148, as amended)	Required Members of Congress and certain congressional staff (with respect to their service as Members or staff) to enroll <i>only</i> in health plans created under the ACA or offered through a health insurance exchange  Allowed all adult children (including married children) up to the age of 26 to remain on or enroll in their parent's FEHB plan  Allowed certain Indian tribes and organizations to purchase FEHB for tribal employees <sup>c</sup>

**Source:** CRS analysis of selected legislation.

- a. See footnote 23.
- b. For a detailed list of individuals eligible for FEHB under the enacting legislation, see the text box "Eligibility Under the Federal Employees Health Benefits Act (P.L. 86-382)."
- c. This provision was included in the Indian Health Care Improvement Reauthorization and Extension Act of 2009 (S. 1790), which was enacted by §10221(a) of the Patient Protection and Affordable Care Act of 2010 (P.L. 111-148).

## Medicare and FEHB

FEHB was established five years prior to Medicare, and in the early years there was little interaction between the programs largely because, in general, federal employees and retirees were not eligible for Medicare based on their federal employment. This situation changed in 1982 when Congress passed the Tax Equity and Fiscal Responsibility Act (P.L. 97-248), which applied Medicare's Hospital Insurance tax to federal employment, thereby enabling federal workers to be eligible for Medicare based on their federal employment.<sup>26</sup>

<sup>26</sup> Although federal employment did not count toward Medicare eligibility prior to 1982, federal employees who were employed in the private sector at one time and were subject to Medicare's Hospital Insurance tax could have been eligible for Medicare based on their prior private sector employment.

**Table 4. Provisions That Have Changed How FEHB and Medicare Interact**

Passed	Authorizing Statute	Change in Medicare-FEHB Relationship
1982	The Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97-248)	Applied Medicare’s Hospital Insurance tax to federal employment  Provided that Medicare payments are secondary for services provided to federal employees and their spouses aged 65 to 69 if covered under FEHB. This provision did not apply to federal retirees; Medicare remained the primary payer for retirees
1986	The Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272)	Provided that Medicare payments are secondary for services provided to federal employees (i.e., workers) and their spouses aged 65 and older if covered under FEHB  This provision did not apply to federal retirees; Medicare remained the primary payer for retirees
1988	Medicare Catastrophic Coverage Act of 1988 (P.L. 100-360)	This act was repealed, <sup>a</sup> but had it not been repealed it would have required OPM to reduce the FEHB premiums charged to Medicare-eligible retirees who also are participating in FEHB
1990	Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508)	Required improved coordination between Medicare and FEHB  Applied certain Medicare Part A payment limits to services provided to retired FEHB enrollees aged 65 and over <i>who are not covered by Medicare Part A</i> <sup>b</sup>
1992	Treasury, Postal Service, and General Government Appropriations Act (P.L. 102-393)	Prohibited the use of funds appropriated by the act to implement changes proposed by OPM that would affect Medicare beneficiaries
1993	Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66)	Applied certain Medicare Part B payment limits to services provided to retired FEHB enrollees aged 65 and older <i>who do not participate in Medicare Part B</i> <sup>b</sup>

**Source:** CRS analysis of selected legislation.

- a. The law was repealed by the Medicare Catastrophic Coverage Repeal Act of 1989 (P.L. 101-234).
- b. Medicare has specific rules for payment of covered benefits, and all Medicare beneficiaries, including those who also have coverage under FEHB, are subject to those rules. For more information on the rules, see CRS Report RL30526, *Medicare Payment Updates and Payment Rates*, coordinated by Paulette C. Morgan.

## Appendix. FEHB Legislative History

The following are detailed summaries of selected laws or provisions of laws that established, amended, or changed the Federal Employees Health Benefits (FEHB) Program.

### Federal Employees Health Benefits Act of 1959 (P.L. 86-382), September 28, 1959

Effective July 1, 1960, P.L. 86-382 established the FEHB program for the federal workforce. The act established the general parameters for the program, including eligibility and enrollment procedures; the types of benefits that may be provided; the level of the government's share of premiums; and the role of the Office of Personnel Management (OPM).<sup>27</sup>

Eligible participants specified in the enacting legislation included current federal employees and retirees who retired *after* July 1, 1960, either on an immediate annuity with at least 12 years of service or for a disability.<sup>28</sup> Retirees also were required either to be enrolled in an FEHB plan for at least five years immediately prior to retirement or to have enrolled at the earliest opportunity to do so. Family members of employees and retirees also were eligible.<sup>29</sup>

OPM was allowed to contract or approve the following types of health benefit plans to participate in FEHB:<sup>30</sup>

- Service Benefit Plan—one government-wide plan (offering two levels of benefits) under which payment is made by an insurer under contracts with providers for the benefits described
- Indemnity Benefit Plan—one government-wide plan (offering two levels of benefits) under which an insurer agrees to pay certain sums of money for the benefits described<sup>31</sup>
- Employee Organization Plans—plans providing health benefits to members of the organization as of July 1, 1959, that are sponsored or underwritten and administered, in whole or in part, by employee organizations; employee organization plans are available only to employees and retirees (and members of their families) who at the time of enrollment are members of the organization
- Comprehensive Medical Plans—either *group-practice prepayment plans*, which offer benefits on a prepaid basis provided by physicians practicing as a group in a common center or centers, or *individual-practice prepayment plans*, which offer

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<sup>27</sup> Prior to the enactment of the Civil Service Reform Act of 1978 (P.L. 95-454), the Office of Personnel Management (OPM) was called the Civil Service Commission. For the sake of clarity, this report only refers to *OPM*, even when discussing legislation passed prior to the Civil Service Reform Act of 1978.

<sup>28</sup> See footnote 23.

<sup>29</sup> See the text box on “Eligibility Under the Federal Employees Health Benefits Act of 1959 (P.L. 86-382),” for a detailed list of individuals eligible for FEHB under the enacting legislation.

<sup>30</sup> §4 of P.L. 86-382.

<sup>31</sup> According to OPM, a major difference between the service benefit plan and the indemnity benefit plan is that the service benefit plan pays providers directly for health care services, whereas enrollees in the indemnity benefit plan pay the provider and the plan reimburses the enrollee.

health services on a prepaid basis provided by individual physicians who agree to accept the payments provided by the plans as full payment for covered services rendered by them

Under P.L. 86-382, the government's share of premiums in FEHB plans was dependent on the type of plan and the type of enrollee.<sup>32</sup>

- For the service benefit plan and the indemnity plan, the government's share was 50% of the lowest rate charged by a carrier, and
  - for an employee or retiree with individual coverage, the biweekly government share could be not less than \$1.25 and not more than \$1.75;
  - for an employee or retiree with family coverage, the biweekly government share could be not less than \$3.00 and not more than \$4.25;
  - for a female employee or retiree (whose husband is not a dependent) with family coverage, the biweekly government share could be not less than \$1.75 and not more than \$2.50.
- For employees and retirees enrolled in either employee organization plans or comprehensive medical plans,
  - the government's share was 50% of the biweekly premium as long as the biweekly premium was less than \$2.50 for individual coverage and less than \$6.00 for family coverage;
  - for a female employee or retiree (whose husband is not a dependent) with family coverage, the government's share was 30% of the premium (as long as the biweekly premium was less than \$6.00).

### **Postal Employees Salary Increase Act of 1960 (P.L. 86-568), July 1, 1960**

P.L. 86-568 authorized FEHB coverage for employees of the county committees established under the Soil Conservation and Domestic Allotment Act for purposes of agricultural stabilization and conservation, and for their dependents.<sup>33</sup>

### **To Amend the Federal Employees Health Benefits Act of 1959 to Provide Additional Choice of Health Benefits Plans, and for Other Purposes (P.L. 88-59), July 8, 1963**

P.L. 88-59 extended the deadline from December 31, 1959, to December 31, 1963, for applications from qualified employee organizations wanting to participate in FEHB. The act also eliminated the requirement for an employee organization to have offered health care benefits to its members prior to submitting an application for FEHB. Prior to the act's passage, for an employee organization to be approved to offer coverage under FEHB it had to have started providing members with health care benefits by July 1, 1959 (see P.L. 86-382).

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<sup>32</sup> §7 of P.L. 86-382.

<sup>33</sup> §115(d) of P.L. 86-568.

**To Amend the Federal Employees Health Benefits Act of 1959 to Remove Certain Inequities in the Application of Such Act, to Improve the Administration Thereof, and for Other Purposes (P.L. 88-284), March 17, 1964**

P.L. 88-284 broadened FEHB coverage to include employees receiving compensation because of a work-related injury, foster children, and unmarried children up to the age of 21. The act also allowed employees to continue their FEHB coverage in retirement if they were enrolled in an FEHB plan by December 31, 1964.<sup>34</sup>

At the request of OPM, the act gave OPM discretionary authority to terminate FEHB plan contracts with any carrier who did not enroll at least 300 employees and retirees (excluding family members) during the preceding two contract terms. The act made the government's share of the premium the same for all enrollees, regardless of gender.<sup>35</sup>

Finally, the act changed the government's share of premiums for employee organization plans and comprehensive medical plans. For an employee or retiree enrolled in one of these plans where the biweekly premium was less than twice the government share established for service benefit and indemnity plans, the government's share was 50% of the premium for both individual and family plans.<sup>36</sup>

**To Bring Certain United States Commissioners Within the Purview of the Federal Employees' Health Benefits Act of 1959 and the Federal Employees Group Life Insurance Act of 1954 (P.L. 88-531), August 31, 1964**

P.L. 88-531 authorized FEHB coverage for certain United States commissioners and their dependents if the Civil Service Retirement Act (P.L. 71-279) applies to the commissioners.

**To Amend the Federal Employees Health Benefits Act of 1959 So As to Authorize Certain Teachers Employed by the Board of Education of the District of Columbia to Participate in a Health Benefits Plan Established Pursuant to Such Act, to Amend the Federal Employees Group Life Insurance Act of 1954 So As to Extend Insurance Coverage to Such Teachers, to Provide for Retroactive Salary Increases for Certain Civilian Employees of the Federal Government, and for Other Purposes (P.L. 88-631), October 6, 1964**

P.L. 88-631 authorized FEHB coverage for teachers in the District of Columbia if they had been temporarily employed as teachers for at least two school years.

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<sup>34</sup> Under FEHB's enacting legislation (P.L. 86-382), the continuation of health benefits coverage into retirement required a retiree to have at least five years of FEHB coverage immediately prior to retirement or to have been enrolled in FEHB continuously from the first opportunity to enroll. Many employees had not realized the importance of enrolling at their first opportunity and, without P.L. 88-284, would have been ineligible to continue their FEHB enrollment into retirement.

<sup>35</sup> FEHB's enacting legislation (P.L. 86-382) provided for a smaller government contribution for women whose husbands were not dependents and who were enrolled in a family plan.

<sup>36</sup> §7 of P.L. 88-284.

**To Preserve the Benefits of the Civil Service Retirement Act, the Federal Employees Group Life Insurance Act of 1954, and the Federal Employees Health Benefits Act of 1959 for Congressional Employees Receiving Certain Congressional Staff Fellowships (P.L. 89-379), March 30, 1966**

P.L. 89-379 extended FEHB coverage to congressional employees receiving certain congressional staff fellowships.

**Federal Salary and Fringe Benefits Act of 1966 (P.L. 89-504), July 18, 1966**

P.L. 89-504 amended FEHB to change the fixed-dollar government share of premiums. The biweekly government share for *all* plan types for individual enrollment became \$1.62; the biweekly government share for *all* plan types for family enrollment became \$3.94. Neither could exceed 50% of the total premium.<sup>37</sup>

In addition, FEHB coverage for dependent children was extended from the age of 21 to the age of 22.<sup>38</sup> Also, employees who were on leave without pay to serve as full-time officers or employees of employee organizations<sup>39</sup> were permitted to continue or acquire coverage.<sup>40</sup>

**National Guard Technicians Act of 1968 (P.L. 90-486), August 13, 1968**

P.L. 90-486 converted National Guard technicians to federal employee status effective January 1, 1969, which made them eligible for FEHB coverage.<sup>41</sup>

**Federal Magistrates Act (P.L. 90-578), October 17, 1968**

P.L. 90-578 authorized FEHB coverage for full-time United States magistrates and their clerical and secretarial assistants.<sup>42</sup>

**Foreign Assistance Act of 1969 (P.L. 91-175), December 30, 1969**

P.L. 91-175 granted federal employees the option of continuing participation in FEHB during a period of transfer to employment with an international organization.<sup>43</sup>

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<sup>37</sup> §602 of P.L. 89-504.

<sup>38</sup> §601 of P.L. 89-504.

<sup>39</sup> An *employee organization* is defined in P.L. 86-382 as “an association or other organization of employees which is national in scope or in which membership is open to all employees of a government department, agency, or independent establishment who are eligible to enroll in a health benefits plan under this Act.”

<sup>40</sup> §406 of P.L. 89-504.

<sup>41</sup> §§3 and 11 of P.L. 90-486.

<sup>42</sup> §634 of P.L. 90-578.

<sup>43</sup> §502 of P.L. 91-175.

### **To Increase the Contribution by the Federal Government to the Cost of Health Benefits Insurance, and for Other Purposes (P.L. 91-418), September 25, 1970**

P.L. 91-418 altered the determination of the government's share of premiums in an effort to "provide automatic indexing of the government contribution to reflect increases in medical price inflation."<sup>44</sup>

Beginning with the first pay period in 1971, the act established what is commonly referred to as the "big six" formula. The big six formula is equal to the simple average of the premiums of six benefit plans: the two government-wide plans (the service benefit plan and the indemnity plan), and the two employee organization plans and the two comprehensive medical plans with the highest enrollment. The average is calculated separately for individual and family coverage and uses the high option where both a high and standard option are offered. The act set the government's share at 40% of the simple average of the big six premiums.<sup>45</sup>

The act permitted family members who received an immediate annuity as the survivor of an employee or retiree to continue enrollment in an FEHB plan in the event that the deceased had completed less than five years of creditable service.<sup>46</sup> FEHB coverage also was extended to noncitizen employees whose permanent duty station was in the Panama Canal Zone.<sup>47</sup>

### **Intergovernmental Personnel Act of 1970 (P.L. 91-648), January 5, 1971**

P.L. 91-648 permitted federal employees who were assigned to state or local governments to FEHB maintain their eligibility and coverage. It also extended FEHB coverage to state or local government employees who were assigned to an executive agency (where there otherwise would have been a loss of coverage in a group health benefits plan, the premium of which was paid in whole or in part by the state or local government).<sup>48</sup>

### **To Extend Civil Service Federal Employees Group Life Insurance and Federal Employees Health Benefits Coverage to United States Nationals Employed by the Federal Government (P.L. 93-160), November 27, 1973**

P.L. 93-160 extended FEHB coverage to otherwise eligible U.S. nationals employed by the federal government at permanent duty stations outside of both the United States and the Panama Canal Zone.

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<sup>44</sup> Towers, Perrin, Forster, and Crosby, Inc. *Study of the Federal Employees Health Benefits Program* (Washington, 1988), p. 29.

<sup>45</sup> §1 of P.L. 91-418.

<sup>46</sup> §2 of P.L. 91-418.

<sup>47</sup> §3 of P.L. 91-418.

<sup>48</sup> §§3373-3374 of P.L. 91-648.

**To Increase the Contribution of the Government to the Costs of Health Benefits for Federal Employees, and for Other Purposes (P.L. 93-246), January 31, 1974**

P.L. 93-246 increased the government's share of the FEHB plan premium from 40% to 50% of the simple average of the big six premiums for pay periods commencing in 1974.<sup>49</sup> A provision to increase the government's share to 60% of the big six average premiums for pay periods beginning in 1975 also was included in the act. A maximum was set on the government's share so that it does not exceed 75% of the total premium amount for any one health plan.<sup>50</sup>

Additionally, health insurance plans participating in FEHB were required to comply with OPM's decision in disputes regarding whether or not an individual was entitled to a health benefit.<sup>51</sup>

**To Provide for Access to All Duly Licensed Clinical Psychologists and Optometrists Without Prior Referral in the Federal Employee Health Benefits Program (P.L. 93-363), July 30, 1974**

P.L. 93-363 provided that if a plan covers services that may be performed by licensed or certified optometrists or clinical psychologists, an FEHB enrollee shall have direct access to the optometrist or clinical psychologist without supervision or referral by another practitioner. The act further provided that the FEHB enrollee shall be entitled to have payment or reimbursement made to him or on his behalf for services performed.<sup>52</sup>

**To Amend Title 5, *United States Code*, to Grant Court Leave to Federal Employees When Called as Witnesses in Certain Judicial Proceedings, and for Other Purposes (P.L. 94-310), June 15, 1976**

The amendments in P.L. 94-310 provided that the government's share of health plan premiums for retirees that are paid from annual appropriations authorized for that purpose should be made available until expended.<sup>53</sup>

**To Amend Title 5, *United States Code*, to Restore Eligibility for Health Benefits Coverage to Certain Individuals Whose Survivor Annuities Are Restored (P.L. 94-342), July 6, 1976**

P.L. 94-342 provided that a surviving spouse covered by FEHB who had his or her survivor annuity terminated due to remarriage and later restored is eligible to reenroll in FEHB if the

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<sup>49</sup> The 40% government contribution rate was established by P.L. 91-418.

<sup>50</sup> §1 of P.L. 93-246. Previously, the government contribution was not to exceed 50% of the total premium amount for any one plan. See P.L. 89-504.

<sup>51</sup> §3 of P.L. 93-246.

<sup>52</sup> §1 of P.L. 93-363. The provision does not apply to group-practice prepayment plans, which are a type of comprehensive medical plan, as defined in the enacting FEHB legislation (P.L. 86-382).

<sup>53</sup> §3 of P.L. 94-310.

surviving spouse was covered by an FEHB health benefits plan immediately before the annuity was terminated.

**To Amend Chapter 89 of Title 5, *United States Code*, to Establish Uniformity in Federal Employee Health Benefits and Coverage by Preempting Certain State or Local Laws Which Are Inconsistent with Such Contracts, and for Other Purposes (P.L. 95-368), September 17, 1978**

P.L. 95-368 established uniformity in benefits and coverage under FEHB by preempting certain state and local laws that were inconsistent with FEHB contracts.

The act provided certain protections to members of medically underserved populations.<sup>54</sup> Beginning January 1, 1980, and ending December 31, 1984, if an FEHB contract provided or paid for the cost of a certain health service, the insurance carrier would be required to pay, up to the limits of its contract, for any health practitioner who is licensed by a state to provide that service if the recipient is a member of a medically underserved population.<sup>55</sup>

The act also changed the requirement that barred employee organizations from appealing to sponsor a health benefit plan after January 1, 1964, permitting such organizations to apply between December 31, 1978, and January 1, 1980.

**Federal Employees Part-Time Career Employment Act of 1978 (P.L. 95-437), October 10, 1978**

P.L. 95-437 allowed part-time career employees and their dependents to access FEHB coverage.<sup>56</sup> According to Title 5, Section 3401(2) of the *United States Code*, part-time career employment is employment consisting of a 16 hour-32 hour work week, but it does not include employment on a temporary or intermittent basis.

**To Amend Subchapter III of Chapter 83 of Title 5, *United States Code*, to Provide That Employees Who Retire After Five Years of Service, in Certain Instances, May Be Eligible to Retain Their Life and Health Insurance Benefits, and for Other Purposes (P.L. 95-583), November 2, 1978**

P.L. 95-583 reduced the length of *creditable service* required for an employee to continue FEHB coverage in retirement from 12 years to 5 years (the 12-year requirement was established by P.L. 86-382). The act *did not* change the requirement that for employees to continue FEHB into retirement, they must be enrolled in an FEHB plan for at least five years immediately prior to retirement or they must have enrolled at the earliest opportunity to do so (this requirement was established by P.L. 86-382).

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<sup>54</sup> *Medically underserved population* is defined in §1302(7) of the Public Health Service Act (42 U.S.C. 300e-17).

<sup>55</sup> This provision does not apply to comprehensive medical plans.

<sup>56</sup> §4(c) of P.L. 95-437.

**To Make Certain Technical and Clerical Amendments to Title 5, *United States Code* (P.L. 96-54), August 14, 1979**

The amendments in P.L. 96-54 redefined *employee* for the purpose of FEHB coverage to exclude the previous reference to the United States commissioners (see P.L. 88-531).<sup>57</sup>

**Panama Canal Act of 1979 (P.L. 96-70), September 27, 1979**

P.L. 96-70 redefined the term *employee* for the purposes of FEHB eligibility to exclude individuals who were not citizens or nationals of the United States and whose permanent duty station was outside the United States, *unless* an individual was an employee on September 30, 1979, at an executive branch agency, the United States Postal Service (USPS), or the Smithsonian Institution in the area that was then known as the Panama Canal Zone.<sup>58</sup>

**To Amend the Provisions of Chapters 83 and 89 of Title 5, *United States Code*, Which Relate to Survivor Benefits for Certain Dependent Children, and for Other Purposes (P.L. 96-179), January 2, 1980**

The amendments in P.L. 96-179 eliminated the “lives with” requirement for a natural child to be covered by FEHB and added a dependency requirement for all children to be covered under FEHB.<sup>59</sup> They also redefined the term *medically underserved population* for the purpose of making benefit payments under FEHB.<sup>60</sup>

**Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97-248), September 3, 1982**

Effective January 1, 1983, P.L. 97-248 required federal employees to pay the Medicare Hospital Insurance tax. Requiring federal employees to pay the tax enabled them to count their federal employment toward entitlement for premium-free benefits under Medicare Part A.<sup>61</sup> Prior to passing this act, federal employment did not count toward eligibility for premium-free Part A, but federal employees could qualify for premium-free Part A based on previous private sector employment, if they were subject to the Medicare Hospital Insurance tax.

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<sup>57</sup> §2(a)(52) of P.L. 96-54.

<sup>58</sup> §1209 of P.L. 96-70.

<sup>59</sup> §§1-2 of P.L. 96-179.

<sup>60</sup> §3 of P.L. 96-179.

<sup>61</sup> §§121 and 278 of P.L. 97-248. The Hospital Insurance tax is a payroll tax paid by most employees and employers, and it is used to help fund Medicare’s Hospital Insurance Trust Fund, which pays for beneficiaries’ Medicare Part A benefits. Individuals must pay into the system (i.e., incur the payroll tax) for 40 calendar quarters to become entitled to premium-free Part A benefits. Prior to enactment of P.L. 97-248, federal employees did not pay the Medicare Hospital Insurance tax and therefore their federal employment did not count toward the 40 calendar quarters required to obtain premium-free Part A benefits.

The act also provided that Medicare payments are secondary for services provided to employees aged 65 to 69 (and their spouses aged 65 to 69) if covered under certain employer group health plans, including FEHB.<sup>62</sup>

**To Amend Title 5, *United States Code*, to Provide Training Opportunities for Employees Under the Office of the Architect of the Capitol and the Botanic Garden, and for Other Purposes (P.L. 97-346), October 15, 1982**

The amendments in P.L. 97-346 required OPM to determine the difference between the amount of the government's share of health plan premiums for 1983 and the amount such contributions *would have been* if the two employee organizations included in the 1981 big six formula were included in the 1983 big six formula. The government was required to pay the difference into the contingency reserves of all FEHB plans for 1983 in proportion to the number of enrollees in each plan.<sup>63</sup>

**A Joint Resolution Making Further Continuing Appropriations for the Fiscal Year 1984 (P.L. 98-151), November 14, 1983**

Funds appropriated by P.L. 98-151 were prohibited from being used to pay for abortions or administrative expenses for any FEHB plan that provides benefits or coverage for abortions, except where the life of the woman would be endangered if the fetus were carried to term.<sup>64</sup> This continuing resolution marked the first time an abortion-related provision was applied to FEHB in an appropriations bill, and a similar provision has been included in appropriations bills each year since, with the exception of bills passed in the 103<sup>rd</sup> Congress.<sup>65</sup>

**Civil Service Retirement Spouse Equity Act of 1984 (P.L. 98-615), November 8, 1984**

P.L. 98-615 extended eligibility for FEHB coverage to former spouses of employed, retired, or separated federal employees. The former spouse must pay both the employee's and the government's shares of the premium.<sup>66</sup>

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<sup>62</sup> §116 of P.L. 97-248.

<sup>63</sup> §4 of P.L. 97-346. The enacting legislation (P.L. 86-382) requires that a certain percentage of the premiums paid to each plan by employees, retirees, and the federal government be set aside to provide plans with contingency reserve funds. Funds from each plan's contingency reserves can be used to defray future premium increases; to reduce premium contributions of employees, retirees, and the federal government; or to increase the plan's benefits.

<sup>64</sup> §140 of P.L. 98-151.

<sup>65</sup> P.L. 103-123 and P.L. 103-329.

<sup>66</sup> §3 of P.L. 98-615.

**To Amend Title 5, *United States Code*, to Provide That Employee Organizations Which Are Not Eligible to Participate in the Federal Employees Health Benefits Program Solely Because of the Requirement That Applications for Approval Be Filed Before January 1, 1980, May Apply to Become So Eligible, and For Other Purposes (P.L. 99-53), June 17, 1985**

P.L. 99-53 authorized the establishment of additional employee organization plans in FEHB if the employee organization applied to OPM for plan approval within 90 days of enactment. It also specified the conditions required for plan approval.<sup>67</sup>

In addition, the act permitted certain disability annuitants who later were reemployed to enroll in an FEHB plan if they had been enrolled in any such plan immediately prior to termination of employment.<sup>68</sup>

**Federal Employees Benefits Improvement Act of 1986 (P.L. 99-251), February 27, 1986**

P.L. 99-251 allowed a new type of comprehensive medical plan, called a mixed model prepayment plan, to participate in FEHB.<sup>69</sup> These plans are a combination of group practice prepayment plans and individual practice prepayment plans, which are two types of comprehensive medical plans recognized under FEHB. Additionally, P.L. 99-251 eliminated the requirement in the enacting legislation (P.L. 86-382) that group practice prepayment plans must include physicians representing at least three major medical specialties.<sup>70</sup>

P.L. 99-251 also mandated studies to be undertaken by OPM regarding extending FEHB contracting authority to health practitioners who were not currently covered, such as nurse midwives and chiropractors.<sup>71</sup> In addition, it extended contracting authority to clinical social workers, although it permitted health plans to require referral by a psychiatrist as a condition for reimbursement.<sup>72</sup>

The act also expressed the sense of Congress that enrollees in FEHB should receive adequate treatment for mental illness, alcoholism, and drug addiction.<sup>73</sup> In addition, it directed OPM to study the adequacy of the FEHB information materials disseminated to employees during the open enrollment season.<sup>74</sup>

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<sup>67</sup> §1 of P.L. 99-53.

<sup>68</sup> §3 of P.L. 99-53.

<sup>69</sup> §111 of P.L. 99-251.

<sup>70</sup> §102 of P.L. 99-251. Group practice prepayment plans are a type of comprehensive medical plan under FEHB.

<sup>71</sup> §108 of P.L. 99-251. OPM released this study, entitled *A Study Relating to Expanding the Class of Health Practitioners Authorized to Receive Direct Payment or Reimbursement in Accordance with 5 U.S.C., 8902(k)(1)*, in March 1986.

<sup>72</sup> §105 of P.L. 99-251.

<sup>73</sup> §107 of P.L. 99-251.

<sup>74</sup> §109 of P.L. 99-251. OPM released this study, entitled *A Study of the Adequacy of Information Materials under the Federal Employees Health Benefits Program*, in May 1986.

P.L. 99-251 gave OPM the authority to waive the five years of service requirement for individuals to have FEHB coverage in retirement in cases of exceptional circumstances.<sup>75</sup> The act provided for a three-week period during which enrollees may change or cancel their enrollment in the event that rates or benefits changed, a new plan is offered, or an existing plan is terminated. Enrollees were authorized to transfer enrollment at other times and under such circumstances as prescribed by OPM.<sup>76</sup>

### **Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272), April 7, 1986**

P.L. 99-272 required OPM to determine the minimum level of financial reserves that each carrier must hold to ensure stable and efficient operation of the health plan. The act set forth provisions regarding minimum amounts to be refunded and the use of such amounts. Reserves held in excess of such minimum levels were to be returned to the Employees Health Benefits Fund. Beginning October 1, 1986, P.L. 99-272 required USPS to pay the government's share of the health plan premium for postal employees who first became annuitants because of retirement.<sup>77</sup> In addition, the act provided that Medicare payments are secondary for services provided to employees aged 70 and older (which includes FEHB or certain other employer group health plans).<sup>78</sup>

### **Federal Employees' Retirement System Act of 1986 (P.L. 99-335), June 6, 1986**

P.L. 99-335 provided FEHB eligibility to individuals first employed by the government of the District of Columbia before October 1, 1987.<sup>79</sup>

### **Intelligence Authorization Act for Fiscal Year 1987 (P.L. 99-569), October 27, 1986**

P.L. 99-569 provided health benefits for certain former spouses of Central Intelligence Agency (CIA) employees.<sup>80</sup>

### **A Joint Resolution Making Further Continuing Appropriations for the Fiscal Year 1988, and Other Purposes, 1988 (P.L. 100-202), December 22, 1987**

P.L. 100-202 added qualified clinical social workers to the group of non-physician providers to whom FEHB enrollees must have direct access and who are entitled to receive payment by an FEHB plan.<sup>81</sup>

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<sup>75</sup> The five-year requirement was established in P.L. 95-583.

<sup>76</sup> §104 of P.L. 99-251.

<sup>77</sup> §15202 of P.L. 99-272.

<sup>78</sup> §9201 of P.L. 99-272.

<sup>79</sup> §207(c) of P.L. 99-335.

<sup>80</sup> §303 of P.L. 99-569.

<sup>81</sup> §626, Title VI of P.L. 100-202. The provision does not apply to individuals enrolled in comprehensive medical plans.

### **Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203), December 22, 1987**

P.L. 100-203 specified the amount (\$160 million in FY1988 and \$270 million in FY1989) of the contributions to be made by USPS to the Employee Health Benefits Fund to pay the government's share of the health plan premiums for certain USPS retirees and survivor annuitants.<sup>82</sup>

### **Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (P.L. 100-204), December 22, 1987**

P.L. 100-204 provided FEHB coverage for certain former spouses of employees or former employees of the Foreign Service.<sup>83</sup>

### **Making Technical Corrections Relating to the Federal Employees' Retirement System, and for Other Purposes (P.L. 100-238), January 8, 1988**

P.L. 100-238 declared that certain nonfederal employees who were eligible for FEHB benefits were no longer entitled to such benefits after October 1, 1988.<sup>84</sup> However, the act continued FEHB coverage for employees of St. Elizabeth's Hospital who became District of Columbia employees due to the federal government's transfer of the hospital to the District of Columbia.<sup>85</sup>

### **Medicare Catastrophic Coverage Act of 1988 (P.L. 100-360), July 1, 1988**

P.L. 100-360 included some provisions affecting FEHB that later were repealed by the Medicare Catastrophic Coverage Repeal Act of 1989 (P.L. 101-234). Had it not been repealed, the act would have (1) required OPM to reduce the rates charged to retirees participating in FEHB who also were Medicare eligible; (2) specified that the rates were to be reduced by the amount (prorated for each covered Medicare-eligible retiree) of the estimated cost of medical services and supplies that would have been incurred by FEHB had certain provisions of the act not been enacted;<sup>86</sup> (3) required OPM to submit a report to Congress by April 1, 1989, regarding changes to FEHB that may be required to incorporate health benefit plans designed specifically for Medicare-eligible individuals and to improve the efficiency and effectiveness of the program; and (4) required OPM to submit a separate report to Congress by April 1, 1989, on the feasibility of adopting the National Association of Insurance Commissioners' standards when providing Medicare supplemental health benefit plans under FEHB.<sup>87</sup>

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<sup>82</sup> §6003 of P.L. 100-203.

<sup>83</sup> §832 of P.L. 100-204.

<sup>84</sup> §108 of P.L. 100-238.

<sup>85</sup> §109 of P.L. 100-238.

<sup>86</sup> §422 of P.L. 100-360. According to OPM, the premium reduction for 1989 would have been \$3.10 per month for each Medicare-eligible individual also participating in FEHB had the provision related to reduced cost sharing not been repealed.

<sup>87</sup> §423 of P.L. 100-360.

## **Federal Employees Health Benefits Amendments Act of 1988 (P.L. 100-654), November 14, 1988**

P.L. 100-654 set forth provisions regarding OPM's to impose debarment and other sanctions on health care providers convicted of illegal activities, including financial misconduct; neglect or abuse of patients; the unlawful manufacture, distribution, or dispensing of a controlled substance; and interference with an investigation or prosecution of any criminal offenses.

The act also set time limits for OPM to initiate a debarment proceeding and prohibited providers without a valid license from participating in FEHB. The act authorized OPM to impose fines on providers who made false charges or claims in connection with providing health services or supplies.<sup>88</sup>

In addition, P.L. 100-654 created temporary continuation of FEHB coverage (TCC) for federal employees. Effective in the 1990 contract year, TCC allows most separating employees and their families to maintain FEHB coverage for up to 18 months after the date of separation.<sup>89</sup> TCC enrollees must pay the full premium, both the employee's and the government's shares, for the plan they select, plus a 2% administrative charge. TCC is available only to employees separated from service for reasons other than gross misconduct and to individuals no longer meeting unmarried dependent child requirements.<sup>90</sup>

The act directed OPM to prescribe regulations to offer health benefits coverage to temporary federal employees who have completed one year of continuous service, with such employees paying the total premium amount.<sup>91</sup>

## **Office of Federal Procurement Policy Act Amendments of 1988 (P.L. 100-679), November 17, 1988**

P.L. 100-679 provided that certain employees on the office staff of former Presidents or Vice Presidents are considered federal employees and therefore are eligible for FEHB.<sup>92</sup>

## **Relating to the Method by Which Government Contributions to the Federal Employees Health Benefits Program Shall Be Computed for 1990 or 1991 If No Government-Wide Indemnity Benefit Plan Participates in That Year (P.L. 101- 76), August 11, 1989**

P.L. 101-76 adjusted the big six formula in response to Aetna's withdrawal from FEHB.<sup>93</sup> The act provided that for plan years 1990 and 1991, the government's share of FEHB plans would be

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<sup>88</sup> §101 of P.L. 100-654.

<sup>89</sup> The act allows some separating employees to maintain their temporary coverage for longer periods. Individuals who cease to meet the requirements for being considered a dependent child and certain former spouses may maintain TCC for 36 months.

<sup>90</sup> §201 of P.L. 100-654.

<sup>91</sup> §301 of P.L. 100-654.

<sup>92</sup> §13 of P.L. 100-679.

<sup>93</sup> The enacting FEHB legislation (P.L. 86-382) provided that one of the plan types FEHB could offer is one (continued...)

calculated by adjusting the Aetna high option premium for the previous year by the average percentage change in the remaining five plans included in the big six formula. The provisions of this act would not apply if comprehensive reform legislation is enacted that amends FEHB financing provisions. OPM must transmit recommendations to Congress for comprehensive FEHB reform no later than 180 days after enactment.

### **Omnibus Budget Reconciliation Act of 1989 (P.L. 101-239), December 19, 1989**

P.L. 101-239 required the USPS to pay the employer's (government's) share of FEHB premiums for survivors of postal employees who retired on or after October 1, 1986, and survivors of postal employees who died on or after that date.<sup>94</sup>

### **Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (P.L. 101-246), February 16, 1990**

P.L. 101-246 authorized FEHB coverage for any former spouse who on February 14, 1981, was married to a former Foreign Service employee of the United States Information Agency or of the U.S. Agency for International Development if (1) the former employee retired from the Civil Service Retirement System on a date before his or her employing agency could legally participate in the Foreign Service Retirement System; (2) the marriage included at least five years during which the employee was assigned overseas; and (3) the former spouse otherwise is qualified for FEHB.<sup>95</sup>

### **To Amend Title 5, *United States Code*, to Allow Federal Annuitants to Make Contributions for Health Benefits Through Direct Payments Rather Than Through Annuity Withholdings If the Annuity Is Insufficient to Cover the Required Withholdings, and for Other Purposes (P.L. 101-303), May 29, 1990**

P.L. 101-303 allowed federal retirees to pay health benefits premiums through direct payments rather than through annuity withholdings if the annuity is insufficient to cover the required withholdings.<sup>96</sup>

### **Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508), November 5, 1990**

P.L. 101-508 included a number of FEHB-related reforms.<sup>97</sup> It required FEHB plans to implement hospitalization cost-containment measures and stipulated that FEHB must improve cash

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government-wide indemnity plan (with two levels). The Aetna Life Insurance Company offered the indemnity plan from the beginning of FEHB through 1989, when Aetna decided it no longer would serve as the administrator of the plan. At the time, the government share of each plan's premium was the dollar amount equal to a percentage of the average cost of six plans (the big six), which included the indemnity plan. With Aetna's withdrawal from FEHB and no insurance company filling Aetna's role as the administrator of the indemnity plan, the big six formula needed to be restructured.

<sup>94</sup> §4003 of P.L. 101-239.

<sup>95</sup> §146 of P.L. 101-246.

<sup>96</sup> §1 of P.L. 101-303.

management related to payments from a plan's contingency reserves. The act exempted FEHB plans from state premium taxes, and it extended the restructured big six formula created in P.L. 101-76 through plan year 1993 (originally the formula was to be used in plan years 1990 and 1991).

P.L. 101-508 required OPM, in consultation with the Department of Health and Human Services (HHS), to improve coordination between FEHB and Medicare by creating a system that allows FEHB plans to identify individuals who are entitled to Medicare benefits. Additionally, the act applied Medicare payment limits to services that would be covered under Part A for retired FEHB enrollees aged 65 and older who are not covered by Part A. This provision limited the amount FEHB pays for certain services for these individuals to the amount Medicare would pay for the services.<sup>98</sup>

The act also required the USPS to pay the government's share of FEHB premiums for individuals who become annuitants because of retirement from employment with the USPS on or after July 1, 1971.<sup>99</sup> The amount paid by the USPS is prorated to reflect the total portion of federal service performed as a postal employee after June 30, 1971.<sup>100</sup>

### **Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (P.L. 101-513), November 5, 1990**

P.L. 101-513 entitled U.S. hostages in Iraq, Kuwait, and Lebanon, and their family members, to FEHB benefits while in hostage status and for 12 months thereafter, if they did not have other health insurance. Entitlement for these and certain other benefits (e.g., federal life insurance and pay) was subject to the availability of funds; the act appropriated up to \$10 million for these benefits. The authority to obligate funds for this purpose expired six months after the date of enactment.<sup>101</sup>

### **To Amend Title 5, *United States Code*, to Provide Relief from Certain Inequities Remaining in the Crediting of National Guard Technician Service in Connection with Civil Service Retirement, and for Other Purposes (P.L. 101-530), November 6, 1990**

P.L. 101-530 provided that post-1968 service by National Guard technicians would not be a requirement for their eligibility for FEHB benefits.<sup>102</sup>

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<sup>97</sup> §7002 of P.L. 101-508.

<sup>98</sup> The Medicare payment limits are not applied to services provided under comprehensive medical plans. Medicare has specific rules for payment of covered benefits, and all Medicare beneficiaries, including those who also are covered under FEHB, are subject to the rules. For more information about the rules, see CRS Report RL30526, *Medicare Payment Updates and Payment Rates*, coordinated by Paulette C. Morgan.

<sup>99</sup> Prior to enactment of P.L. 101-508, the USPS was required to pay the government's share of premiums for USPS retirees who retired on or after October 1, 1986.

<sup>100</sup> §§7102 and 7103 of P.L. 101-508.

<sup>101</sup> §599C of P.L. 101-513.

<sup>102</sup> §§2 and 3 of P.L. 101-530. Previously, as established in P.L. 90-486, post-1968 service was an FEHB eligibility (continued...)

### **Intelligence Authorization Act, Fiscal Year 1991 (P.L. 102-88), August 14, 1991**

P.L. 102-88 amended the Central Intelligence Agency Act of 1949 (P.L. 81-110) to provide that former spouses of certain CIA employees who are not eligible to enroll or continue enrollment in an FEHB plan solely because of remarriage before the age of 55 may have their eligibility restored on the date such remarriage is dissolved by death, annulment, or divorce and may enroll in an FEHB plan under certain circumstances.<sup>103</sup>

### **Legislative Branch Appropriations Act, 1992 (P.L. 102-90), August 14, 1991**

P.L. 102-90 provided that employees of the Senate Employee Child Care Center are eligible for FEHB coverage and may elect such coverage during the 31-day period beginning on the date of enactment or during FEHB open enrollment periods thereafter.<sup>104</sup>

### **Treasury, Postal Service, and General Government Appropriations Act, 1993 (P.L. 102-393), October 6, 1992**

Funds appropriated by P.L. 102-393 were prohibited from being used to implement changes to FEHB that would affect Medicare beneficiaries.<sup>105</sup> Specifically, the act restricted the use of appropriated funds to make certain changes to FEHB. One restriction was to prevent OPM from requiring retired FEHB enrollees who are eligible for Medicare benefits to pay the difference in out-of-pocket costs when using a nonparticipating Medicare provider (as compared with a participating Medicare provider).<sup>106</sup> The other restriction prevented OPM from eliminating the waiver of FEHB plan coinsurance for prescription drugs used by Medicare-covered FEHB enrollees. OPM intended to make both of these changes administratively for plan year 1993;<sup>107</sup> neither change was implemented due to the act.

### **National Defense Authorization Act for Fiscal Year 1993 (P.L. 102-484), October 23, 1992**

P.L. 102-484 provided for the continuation of FEHB benefits if the basis for such continuation is involuntary separation from a position in or under the Department of Defense due to a reduction in force. This provision applies to any individual whose TCC is based on a separation occurring

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requirement for National Guard technicians.

<sup>103</sup> §307 of P.L. 102-88.

<sup>104</sup> §311 of P.L. 102-90.

<sup>105</sup> §530 of P.L. 102-393.

<sup>106</sup> Most providers and practitioners are subject to limits on the amounts that they can bill Medicare beneficiaries for Medicare-covered services, and these limits differ according to a provider's contractual agreement with Medicare. For more information about *participating* and *nonparticipating* providers within Medicare, see CRS Report R40425, *Medicare Primer*, coordinated by Patricia A. Davis and Scott R. Talaga.

<sup>107</sup> OPM administers FEHB in accordance with the statute and its implementing regulations (5 C.F.R. Part 89 and 48 C.F.R. Chapter 16). The statute establishes basic rules for the program, but OPM is given wide authority in implementing regulations, contracting with plans, establishing benefits, and administering FEHB. OPM's authority to generally administer FEHB allows OPM to make certain changes to the program outside the legislative process. OPM introduced these particular changes in Carrier Letter 92-04, February 20, 1992.

on or after the date of enactment and before October 1, 1997, or February 1, 1998 (if specific notice of such separation was given to such individuals before October 1, 1997).<sup>108</sup> The act limits the individual's payments for this coverage to no more than the required employee's share of premiums for such coverage and requires the agency that last employed the individual to pay for the remaining portion of the coverage.<sup>109</sup>

The act directed the Secretary of Defense to conduct a comprehensive review of FEHB to determine whether furnishing health care under a program similar to FEHB to individuals eligible for health care programs provided by the Department of Defense would be more efficient and cost-effective.<sup>110</sup>

### **Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66), August 10, 1993**

P.L. 103-66 required most FEHB plans to apply the Medicare Part B limitations on payments for physician services to benefits provided to any retired FEHB enrollees aged 65 or older who do not participate in Medicare Part B.<sup>111</sup> In addition, the act required physicians and suppliers who accept Medicare payments to accept equivalent payment and cost sharing from FEHB. Physicians and suppliers who are nonparticipating providers in Medicare cannot impose charges that exceed the limiting charge.<sup>112</sup>

The act also provided for a temporary extension and modification of the restructured big six formula in the continued absence of a government-wide indemnity benefit plan.<sup>113</sup> It extended the formula developed in P.L. 101-76 for plan years 1990 and 1991 through plan year 1998, and it modified the formula for plan years 1997 and 1998.

### **Treasury, Postal Service, and General Government Appropriations Act, 1994 (P.L. 103-123), October 28, 1993**

P.L. 103-123 was the first appropriations act since fiscal year 1984 (P.L. 98-151) that did not include a provision restricting funding for abortion coverage in FEHB plans.<sup>114</sup> That restriction

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<sup>108</sup> §4438 of P.L. 102-484. Subsequent laws have moved forward the dates by which a separation must occur to be eligible for this provision. The most recent law to do so, P.L. 112-81 (§1123), changed the dates to before December 31, 2016, or February 1, 2017 (if specific notice of such separation was given to such individuals before December 31, 2016). For reference, the other laws that have moved forward the dates are: P.L. 103-337 (§341), P.L. 106-65 (§1104), P.L. 107-314 (§1103), P.L. 109-163 (§1101), and P.L. 111-322 (§151).

<sup>109</sup> Section 8905a of Title 5 U.S.C. generally provides for TCC under FEHB for individuals who were covered under FEHB but no longer qualify due to either a change in employment or because the individual ceases to be an unmarried dependent child. Typically, the cost to the individual for TCC under FEHB is the cost of both the employee's and the employer's share of benefits, plus an additional amount prescribed by OPM for administrative expenses (which cannot exceed 2% of the combined total of the employee's and the employer's shares).

<sup>110</sup> §723 of P.L. 102-484. The Secretary of Defense was required to submit to the Congressional defense committees a final report on the study no later than December 15, 1993.

<sup>111</sup> §11003 of P.L. 103-66. This provision does not apply to comprehensive medical plans under FEHB. Medicare has specific rules for payment of covered benefits, and all Medicare beneficiaries, including those who also are covered under FEHB, are subject to the rules. For more information about the rules, see CRS Report RL30526, *Medicare Payment Updates and Payment Rates*, coordinated by Paulette C. Morgan.

<sup>112</sup> §11003 of P.L. 103-66. The *limiting charge* is defined in §1848(g) of the Social Security Act.

<sup>113</sup> §11005 of P.L. 103-66.

<sup>114</sup> Additionally, the Treasury, Postal Service and General Government Appropriations Act, 1995 (P.L. 103-329), (continued...)

was reinserted in the Treasury, Postal Service, and General Government Appropriations Act, 1996 (P.L. 104-52).

### **FEGLI Living Benefits Act, 1994 (P.L. 103-409), October 25, 1994**

P.L. 103-409 allowed individuals covered under health benefit plans administered by the Office of the Comptroller of the Currency or the Office of Thrift Supervision to enroll in an FEHB plan upon termination of either office's plan.<sup>115</sup> The act provides that any period of enrollment under a health benefit plan administered by either office shall be deemed a period of enrollment under FEHB.

### **Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1996 (P.L. 104-37), October 21, 1995**

P.L. 104-37 allowed individuals covered under health benefit plans administered by the Farm Credit Administration to enroll in an FEHB plan for coverage effective on and after September 30, 1995.<sup>116</sup> The act also provided that any period of enrollment under a health benefit plan administered by the Farm Credit Administration prior to the enactment of P.L. 104-37 shall be deemed a period of enrollment under FEHB.

### **Treasury, Postal Service, and General Government Appropriations Act, 1996 (P.L. 104-52), November 19, 1995**

P.L. 104-52 reinstated the provision prohibiting appropriated funds from being available to pay for an abortion or for the administrative expenses of any health plan under FEHB that provides benefits or coverage for abortions, except where the life of the woman would be endangered. The act modified the provision from previous versions to add an exception for pregnancy resulting from rape or incest.<sup>117</sup> This provision has been added each year to subsequent appropriations bills through the date of this report.

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passed September 30, 1994, did not include a provision that restricted funding for abortion coverage in FEHB plans.

<sup>115</sup> §5 of P.L. 103-409. Government agencies that have the authority to fix compensation (i.e., independent establishments as defined in 5 U.S.C. §104 and government corporations as defined in 5 U.S.C. §103) generally also have the authority to offer health plans to their employees either in place of FEHB or as an alternative to FEHB. Prior to the enactment of P.L. 103-409, the Office of the Comptroller of the Currency and the Office of Thrift Supervision offered health plans as alternatives to FEHB. For more information see U.S. General Accounting Office (GAO), *U.S. Employees Health Benefits: Independent Agencies Offering Their Own Health Plans*, GAO/HRD-89-49, March 1989, at <http://www.gao.gov/assets/220/211072.pdf>.

<sup>116</sup> §601 of P.L. 104-37. See footnote 105. Prior to the enactment of P.L. 104-37, the Farm Credit Administration offered its employees a health plan as an alternative to FEHB.

<sup>117</sup> §§524 and 525 of P.L. 104-52.

**National Defense Authorization Act for Fiscal Year 1996 (P.L. 104-106),  
February 10, 1996**

P.L. 104-106 changed how TCC works for certain individuals. The act allowed individuals who voluntarily separate from a surplus position in or under the Department of Defense or the Department of Energy to continue coverage under FEHB and be liable for no more than the employee's share of premiums to FEHB.<sup>118</sup>

**Omnibus Consolidated Appropriations Act, 1997 (P.L. 104-208), September 30,  
1996**

P.L. 104-208 required OPM to prescribe regulations under which surviving children whose survivor annuity was terminated because of marriage and is later restored (because the marriage ends) may enroll in an FEHB plan if such surviving children were covered by an FEHB plan immediately before the annuity was terminated.<sup>119</sup>

The act required the Secretary of Defense, in consultation with the Secretary of HHS and the Director of OPM, to write a report with recommendations for the establishment of a demonstration program.<sup>120</sup> The demonstration program would allow certain beneficiaries of Department of Defense health programs who also are entitled to Medicare Part A to enroll in a health plan offered through FEHB.

**Assisted Suicide Funding Restriction Act of 1997 (P.L. 105-12), April 30, 1997**

P.L. 105-12 generally prohibited the use of federal funds for benefits and services related to assisted suicide, and it prohibited OPM from contracting with plans that include coverage for any of these benefits and services.<sup>121</sup>

**Balanced Budget Act of 1997 (P.L. 105-33), August 5, 1997**

P.L. 105-33 modified the formula for determining the government's share of FEHB premiums.<sup>122</sup> The act required OPM to determine the weighted average premium of all plans in FEHB every year by October 1<sup>st</sup>.<sup>123</sup> This percentage is calculated separately for individual coverage and family coverage, but the same formula is used. Under the act, the biweekly government share of an FEHB plan for an employee or retiree is equal to 72% of the weighted average premium of all plans. (P.L. 105-33 maintained the provision enacted by P.L. 93-246 providing that the biweekly

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<sup>118</sup> Generally, under TCC an employee is responsible for both the employee's and the employer's (government's) share of the FEHB premium, as well as an additional amount prescribed by OPM for administrative expenses (which cannot exceed 2% of the combined total of the employee's and the employer's shares). See P.L. 100-654.

<sup>119</sup> §633 of P.L. 104-208.

<sup>120</sup> §8129 of P.L. 104-208.

<sup>121</sup> §3 of P.L. 105-12.

<sup>122</sup> §7002 of P.L. 105-33.

<sup>123</sup> The weight given to each plan is required to be commensurate with the number of enrollees in such plan as of March 31<sup>st</sup> of the year in which the determination is made.

government share cannot exceed 75% of any given plan's premium). This section of P.L. 105-33 took effect the first day of the contract year that began in 1999.

The act also mandated that individuals enrolled in FEHB are not eligible to enroll in a Medicare Medical Savings Account (MSA) plan<sup>124</sup> until OPM certifies to HHS that OPM has adopted policies to ensure that enrollment in such plans will not result in increased expenditures for the federal government.<sup>125</sup>

### **Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (P.L. 105-261), October 17, 1998**

P.L. 105-261 directed the Secretary of Defense to enter into an agreement with the Director of OPM to conduct a demonstration project under which certain individuals eligible for Department of Defense health benefits were able to enroll voluntarily in health plans offered through FEHB.<sup>126</sup> According to the act, the demonstration project had to be conducted during three contract years under FEHB; eligible beneficiaries were permitted to enroll during an open enrollment period for the year 2000, and the project terminated on December 31, 2002.

The act required the Secretary of Defense and the Director of OPM to submit interim and final reports to Congress on project costs, effectiveness, and the feasibility of making the program permanent. It also required Comptroller General to submit a report to Congress addressing the same issues as well as any limitations with respect to the data contained in the report.

### **Federal Employees Health Care Protection Act of 1998 (P.L. 105-266), October 19, 1998**

P.L. 105-266 provided for a number of largely administrative changes to FEHB. OPM is required to debar health care providers<sup>127</sup> from FEHB for certain fraudulent practices.<sup>128</sup> The act modified the definition of a carrier under FEHB from an "organization" to an "organization and an association of organizations or other entities described in this paragraph sponsoring a health benefits plan." It specified that the government-wide plan offered in FEHB may be underwritten by participating affiliates licensed in each state. The act also revised preemption provisions so that the terms of the contract relating to the nature, provision, or extent of coverage or benefits under FEHB shall supersede and preempt any state or local law, or any regulation issued by a state or local entity, that relates to health insurance or plans.<sup>129</sup>

OPM is required to encourage carriers that enter into contractual arrangements with OPM to obtain discounts from providers of health care services and supplies and to seek assurance that the

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<sup>124</sup> The definition of a medical savings account plan in P.L. 105-33 is a type of Medicare+Choice (now called Medicare Advantage) plan that provides reimbursement for items and services only after the enrollee incurs expenses equal to the amount of the annual deductible.

<sup>125</sup> §1851 of P.L. 105-33.

<sup>126</sup> §721 of P.L. 105-261.

<sup>127</sup> A *health care provider* is defined in 5 U.S.C. §8902a as a "physician, hospital, or other individual or entity which furnishes health care services or supplies."

<sup>128</sup> §2 of P.L. 105-266.

<sup>129</sup> P.L. 105-274 revises language relating to preemption of state laws that was originally crafted in P.L. 95-368.

conditions for such discounts are fully disclosed to the providers who grant them.<sup>130</sup> The act established rules for the readmission of certain plans that have discontinued their participation in FEHB and for the treatment of the contingency reserves of discontinued plans.<sup>131</sup> Prior to the act's passage, plans under FEHB were required to provide enrollees direct access to certain types of licensed providers (such as clinical psychologists, optometrists, and clinical social workers) if the enrollees required services from those providers.<sup>132</sup> P.L. 105-266 clarified that plans under FEHB also are allowed to provide direct access, direct payment, and reimbursement to licensed health care providers that are not specified in statute.<sup>133</sup>

The act provided that individuals enrolled in Federal Deposit Insurance Corporation (FDIC) health plans or health plans available to the Board of Governors of the Federal Reserve System may enroll in FEHB plans when the FDIC and Federal Reserve plans terminate.<sup>134</sup> It also provided that any period of enrollment in a health benefits plan administered by FDIC or the Federal Reserve before the termination of such plan (January 2, 1999) is deemed to be a period of enrollment in FEHB.

### **District of Columbia Courts and Justice Technical Corrections Act of 1998 (P.L. 105-274), October 21, 1998**

P.L. 105-274 provided that Public Defender Service employees would be treated as federal employees for purposes of eligibility for health insurance under FEHB, compensation for work injuries, retirement, and life insurance.<sup>135</sup>

### **Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (P.L. 105-277), October 21, 1998**

P.L. 105-277 required all FEHB plans to cover contraceptives, with the exception of specified plans<sup>136</sup> and any other existing or future plan that objects to such coverage on the basis of

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<sup>130</sup> §5 of P.L. 105-266.

<sup>131</sup> §6 of P.L. 105-266.

<sup>132</sup> 5 U.S.C. §8902(k)(1). This section applies only to enrollees in service benefit plans, indemnity benefit plans, and employee organization plans; enrollees in comprehensive medical plans are not required to have direct access to specified providers.

<sup>133</sup> §8 of P.L. 105-266.

<sup>134</sup> §4 of P.L. 105-266. Government agencies that have the authority to fix compensation (i.e., independent establishments as defined in 5 U.S.C. §104 and government corporations as defined in 5 U.S.C. §103) generally also have the authority to offer health plans to their employees either in place of FEHB or as an alternative to FEHB. Prior to the enactment of P.L. 105-266, the Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve System offered their employees a health plan as an alternative to FEHB. For more information see GAO, *U.S. Employees Health Benefits: Independent Agencies Offering Their Own Health Plans*, GAO/HRD-89-49, March 1989, at <http://www.gao.gov/assets/220/211072.pdf>.

<sup>135</sup> §7 of P.L. 105-274.

<sup>136</sup> The plans specifically excluded from the requirement for coverage of contraceptives in the appropriations bills are SelectCare; Personal Care's HMO; Care Choices; OSF Health Plans, Inc.; and Yellowstone Community Health Plan. According to OPM, in contract year 2012, none of these excepted plans still participated in FEHB and no plan had a religious exception from providing contraceptive coverage.

religion.<sup>137</sup> As of the date of this report, this provision has been renewed each year in subsequent appropriations bills.

### **National Defense Authorization Act for Fiscal Year 2000 (P.L. 106-65), October 5, 1999**

P.L. 106-65 required the Secretary of Defense to compare the case management program of the Department of Defense and the case management coverage offered by at least 10 of the most-subscribed plans in FEHB (5 of which must be managed care organizations).<sup>138</sup> The act also required the Secretary of Defense to submit a report that includes a comparison of health care coverage available under TRICARE<sup>139</sup> and coverage available under FEHB.<sup>140</sup> The comparison must include, but not be limited to, a comparison of cost-sharing requirements, overall costs to beneficiaries, covered benefits, and exclusions from coverage.

### **Veterans Millennium Health Care and Benefits Act (P.L. 106-117), November, 30, 1999**

P.L. 106-117 changed how TCC works for certain individuals. The act allowed certain individuals to continue coverage under FEHB and to be liable for no more than the employee's share of premiums to FEHB.<sup>141</sup> Specifically, the act applied to those individuals who are involuntarily separated from a position in or under the Department of Veteran Affairs due to a reduction in force or certain staffing readjustments and those who are voluntarily or involuntarily separated from certain Department of Energy positions.

### **Federal Employees Health Benefits Children's Equity Act of 2000 (P.L. 106-394), October 30, 2000**

P.L. 106-394 mandated that an employee who is required by court or administrative order to provide health insurance coverage for a dependent child must do so under FEHB if the employee cannot provide documentation of other health insurance coverage for the child.<sup>142</sup> If the employee is no longer enrolled in FEHB, the employing federal agency is directed to enroll the employee in a family plan that provides the lower level of coverage under the service benefit plan (if the employee fails to enroll and cannot provide documentation of other coverage for the child).<sup>143</sup> If the employee has individual coverage under FEHB, the employee is authorized to change to

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<sup>137</sup> §656 of P.L. 105-277.

<sup>138</sup> §703 of P.L. 106-65.

<sup>139</sup> TRICARE is the health care program for uniformed service members and their families. For more information, see <http://www.tricare.mil/>.

<sup>140</sup> §717 of P.L. 106-65.

<sup>141</sup> Generally under TCC, an employee is responsible for both the employee's and the employer's (government's) share of the FEHB premium, as well as an additional amount prescribed by OPM for administrative expenses (which cannot exceed 2% of the combined total of the employee's and the employer's shares). See P.L. 100-654.

<sup>142</sup> §2 of P.L. 106-394.

<sup>143</sup> According to 5 U.S.C. §8903, OPM may contract with one "service benefit plan" under FEHB, which is a government-wide fee-for-service plan offering two levels of benefits. Blue Cross Blue Shield has been the service benefit plan offered in FEHB since the program's inception.

family coverage. If the employee does not change his or her coverage, the employing federal agency is directed to change the enrollment of the employee to family coverage either in the plan in which the employee is currently enrolled or in the lower level of coverage under the nationally available service benefit plan.

**National Defense Authorization Act, Fiscal Year 2001 (P.L. 106-398), October 30, 2000**

P.L. 106-398 directed the Secretary of Defense to conduct a study comparing Department of Defense health programs with plans under Medicare and FEHB in the areas of coverage and reimbursement for physical, speech, and occupational therapies.<sup>144</sup>

**District of Columbia Appropriations Act, 2001 (P.L. 106-522), November 22, 2000**

P.L. 106-522 allowed certain employees of the District of Columbia to be treated as federal employees for purposes of eligibility for FEHB. These employees are eligible for benefits under FEHB, and the District of Columbia is required to contribute to FEHB premiums at the same rates as federal agencies.<sup>145</sup>

**National Defense Authorization Act for Fiscal Year 2002 (P.L. 107-107), December 28, 2001**

P.L. 107-107 authorized employing agencies to pay both the employee's and employer's (government's) share of premiums for health care coverage under FEHB for certain reservists who are enrolled in an FEHB plan and are called to active duty in support of a contingency operation.<sup>146</sup>

The act also directed the Comptroller General to carry out a study of the health needs of members of the reserve components of the Armed Forces and the National Guard and their families, with an assessment of the costs and effectiveness of various options including providing them with FEHB coverage.<sup>147</sup>

**To Amend Title 5, *United States Code*, to Allow Certain Catch-Up Contributions to the Thrift Savings Plan to Be Made by Participants Age 50 or Over; to Reauthorize the Merit Systems Protection Board and the Office of Special Counsel; and for Other Purposes (P.L. 107-304), November 27, 2002**

P.L. 107-304 allowed beneficiaries of a health benefits plan administered by the Overseas Private Investment Corporation (OPIC) to obtain FEHB coverage when OPIC-administered plans

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<sup>144</sup> §762 of P.L. 106-398.

<sup>145</sup> §145 of P.L. 106-522.

<sup>146</sup> §519 of P.L. 107-107.

<sup>147</sup> §721 of P.L. 107-107.

terminate.<sup>148</sup> Any period of enrollment under an OPIC-administered plan before the effective date of the act is to be considered a period of enrollment in FEHB.<sup>149</sup>

### **State Justice Institute Reauthorization Act of 2004 (P.L. 108-372), October 25, 2004**

P.L. 108-372 extended FEHB coverage to State Justice Institute employees who began employment on or after October 1, 1988.<sup>150</sup>

### **Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (P.L. 108-375), October 28, 2004**

P.L. 108-375 provided for the temporary continuation of FEHB coverage for up to 24 months for a federal employee who is (1) currently enrolled in FEHB and (2) a member of the reserve component of the Armed Forces and called to active duty in support of a contingency operation and serves on such duty for more than 30 consecutive days.<sup>151</sup> Prior to the act, TCC generally was provided to employees and their family members who voluntarily and involuntarily lost FEHB coverage, but TCC was not explicitly provided for federal employees who were called to active duty as members of the reserve component of the armed forces.

### **Intelligence Authorization Act for Fiscal Year 2005 (P.L. 108-487), December 23, 2004**

P.L. 108-487 authorized the Director of the CIA to take certain actions to protect the unauthorized disclosure of intelligence operations, the identities of undercover intelligence officers, and intelligence sources and methods. In doing this, the Director of the CIA, among other things, may establish and administer a nonofficial cover employee health insurance program for designated employees and their families.<sup>152</sup> A designated employee that participates in this program cannot simultaneously participate in FEHB. However, a designated employee participating in the unofficial program may convert to coverage under FEHB at any time as deemed appropriate by the Director of the CIA.

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<sup>148</sup> §4 of P.L. 107-304.

<sup>149</sup> Government agencies that have the authority to fix compensation (i.e., independent establishments as defined in 5 U.S.C. §104 and government corporations as defined in 5 U.S.C. §103) generally also have the authority to offer health plans to their employees either in place of FEHB or as an alternative to FEHB. Prior to the enactment of P.L. 107-304, the Overseas Private Investment Corporation offered a health plan to its employees as an alternative to FEHB. For more information, see GAO, *U.S. Employees Health Benefits: Independent Agencies Offering Their Own Health Plans*, GAO/HRD-89-49, March 1989, at <http://www.gao.gov/assets/220/211072.pdf>.

<sup>150</sup> §3 of P.L. 108-372.

<sup>151</sup> §1101 of P.L. 108-375.

<sup>152</sup> §402(e) of P.L. 108-487.

**Federal Employee Dental and Vision Benefits Enhancement Act of 2004 (P.L. 108-496), December 23, 2004**

P.L. 108-496 directed OPM to submit a report to Congress describing and evaluating options whereby health insurance coverage under FEHB could be made available to unmarried, dependent children under the age of 25 who are enrolled as full-time students at institutions of higher education.<sup>153</sup>

**To Amend Chapter 89 of Title 5, *United States Code*, to Make Individuals Employed by the Roosevelt Campobello International Park Commission Eligible to Obtain Federal Health Insurance (P.L. 110-74), August 9, 2007**

P.L. 110-74 made U.S. citizens employed by the Roosevelt Campobello International Park Commission eligible to obtain health insurance under FEHB.<sup>154</sup>

**To Provide for Certain Federal Employee Benefits to Be Continued for Certain Employees of the Senate Restaurants After Operations of the Senate Restaurants Are Contracted to Be Performed by a Private Business Concern, and for Other Purposes (P.L. 110-279), July 17, 2008**

P.L. 110-279 authorized the continued coverage of federal benefits, including FEHB, for certain employees of Senate restaurants who are employees of the Architect of the Capitol after operations of the Senate restaurants are contracted out to be performed by a private business concern.<sup>155</sup>

**National Aeronautics and Space Administration Authorization Act of 2008 (P.L. 110-422), October, 15, 2008**

P.L. 110-422 specified requirements related to TCC under FEHB for National Aeronautics and Space Administration (NASA) employees as a result of the termination of the Space Shuttle Program; involuntary separation from a position due to a reduction in force, declination of a directed reassignment, or transfer of function; or voluntary separation from a surplus position. The act required that if such an employee is receiving TCC under FEHB, then he or she is not liable for more than the employee's share of the premium for the same health benefits plan and level of benefits. The act requires NASA to pay the remaining share of the premium required under FEHB.<sup>156</sup>

The requirement for such TCC is applicable to individuals whose continued coverage is based on a separation occurring on or after enactment of this section and before December 31, 2010.

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<sup>153</sup> §6 of P.L. 108-496.

<sup>154</sup> §1 of P.L. 110-74.

<sup>155</sup> §1 of P.L. 110-279.

<sup>156</sup> §615 of P.L. 110-422. Generally, TCC enrollees pay the full premium, both the employee's and the employer's share, plus a 2% administrative charge. See P.L. 100-654.

## **Patient Protection and Affordable Care Act (P.L. 111-148, as amended), March 23, 2010**

P.L. 111-148, as amended—also known as the ACA—contains many provisions that apply to health insurance coverage generally; FEHB plans must comply with a number of these provisions.<sup>157</sup> Some of the provisions have no meaningful effect on FEHB because FEHB plans already meet the requirements of these provisions, whereas others confer new requirements on the plans. OPM has provided FEHB plans with guidance on how to implement provisions in the ACA; in some cases, OPM has expanded the scope of provisions in the act. For example, OPM requires FEHB plans to implement some provisions prior to the effective dates specified in the ACA.

The act stipulated that adult children up to the age of 26 can remain on or enroll in their parent's health insurance plan.<sup>158</sup> This provision became effective for FEHB plans beginning January 2011. As a result of extending dependent coverage to the age of 26, TCC is available for three years when the child ages out of FEHB at the age of 26. Similarly, the opportunity for certain disabled children to remain on their parent's plan is tied to the age of 26; if a disability affected a child prior to the age of 26, the child may remain a dependent on his or her parent's plan indefinitely.

The ACA required new plans to offer certain types of preventive care and screening with no out-of-pocket costs.<sup>159</sup> FEHB plans historically have covered many of the preventive care services specified in the act, and since 2011 they have had to waive cost sharing for these services.<sup>160</sup> For all preventive care as required by the ACA, plans may choose to waive cost sharing only when beneficiaries use in-network providers, so that if beneficiaries use out-of-network providers they still may be responsible for cost sharing under the terms and conditions of the plan.

The act required plans and/or plan sponsors (e.g., employers) to provide applicants and enrollees with a summary of benefits and coverage (SBC) and a uniform glossary of terms.<sup>161</sup> The SBC is supposed to provide consumers with simple and straightforward information about a plan's benefits and coverage, and the uniform glossary of terms is intended as a resource to help consumers understand common health insurance terms. OPM required all FEHB plans to provide an SBC and a uniform glossary of terms for plan year 2013.<sup>162</sup>

The ACA prohibited plans from establishing lifetime limits on the dollar value of certain health benefits for any participant or beneficiary.<sup>163</sup> Additionally, the act required plans to establish

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<sup>157</sup> Many of the Patient Protection and Affordable Care Act (ACA; P.L. 111-148, as amended) provisions discussed in this section are explained more generally with respect to their effect on the private health insurance market in CRS Report R42069, *Private Health Insurance Market Reforms in the Affordable Care Act (ACA)*, by Annie L. Mach and Bernadette Fernandez.

<sup>158</sup> §1001 of P.L. 111-148 adding §2714 to the Public Health Service Act, as amended by §2301 of P.L. 111-152.

<sup>159</sup> §1001 of P.L. 111-148 adding §2713 to the Public Health Service Act.

<sup>160</sup> Beginning in 2013, FEHB plans also are required to cover the additional preventive care and screenings for women, as provided by the ACA, without imposing cost-sharing requirements.

<sup>161</sup> §1001 of P.L. 111-148 adding §2715 to the Public Health Service Act.

<sup>162</sup> View the summary of benefits and coverage template FEHB plans must use at [http://www.opm.gov/carrier/carrier\\_letters/2012/2012-22a1.pdf](http://www.opm.gov/carrier/carrier_letters/2012/2012-22a1.pdf). The uniform glossary of health coverage terms is available at [http://www.opm.gov/carrier/carrier\\_letters/2012/2012-22a2.pdf](http://www.opm.gov/carrier/carrier_letters/2012/2012-22a2.pdf).

<sup>163</sup> §10101 of P.L. 111-148 adding §2711 to the Public Health Service Act, as amended by §2301 of P.L. 111-152. (continued...)

restricted annual limits on the dollar value of benefits prior to January 1, 2014, when annual limits were prohibited similar to lifetime limits. Historically, most FEHB plans have not imposed lifetime limits, but some FEHB plans have imposed limits on certain benefits. Beginning in plan year 2013, OPM expected all FEHB plans to eliminate those limits on specified benefits.

The act included requirements related to plans allowing individuals to participate in approved clinical trials.<sup>164</sup> FEHB plans were expected to comply with coverage requirements for clinical trials beginning in plan year 2013. The act prohibited plans from having preexisting condition exclusions.<sup>165</sup> This provision was effective for all individuals in 2014. FEHB plans have always been prohibited from having preexisting condition exclusions, so the provision does not have a meaningful effect on FEHB plans.

Another requirement in the ACA that is applicable to FEHB plans involves the reporting of a medical loss ratio, which is the ratio of plan-incurred claims, including any expenditures that improve the quality of health care, to a plan's total premium revenue.<sup>166</sup> Beginning in 2011, the act required large group plans, including FEHB plans, to provide an annual rebate to each enrollee on a pro rata basis if the ratio of the amount of premium revenue expended on clinical claims and health quality costs (after any applicable adjustments for taxes and regulatory fees) is less than 85%. Carriers who owe rebates are required to issue rebates directly to OPM. The rebate is deposited into the contingency reserve of the health plan and can be used to reduce the cost of the following year's health insurance premiums for the plan.<sup>167</sup>

Starting in 2011, the act modified the definition of *qualified medical expenses*, which affects flexible spending accounts (FSAs), health savings accounts (HSAs), and health reimbursement arrangements (HRAs). The act does not allow over-the-counter (OTC) medicines to be covered by these tax-advantaged accounts unless the medications are prescribed by a physician.<sup>168</sup> The only exception is insulin. Other eligible OTC items that are not medicines or drugs, such as bandages, do not require a prescription. In addition, the ACA raised the penalty from 10% to 20% for those under the age of 65 who make a nonqualified withdrawal from an HSA.<sup>169</sup> Beginning in 2013, the act lowered maximum allowed annual contributions to a Health Care Flexible Spending Account (HCFSA) under FEHB from \$5,000 to \$2,500. The threshold is indexed to inflation for subsequent years.<sup>170</sup>

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(...continued)

Specifically, the ACA prohibits lifetime and annual limits on the dollar value of essential health benefits (EHB). Plans that do not have to offer the EHBs (such as FEHB plans) are asked to make a "good faith effort" to comply with a reasonable interpretation of EHBs with respect to their own plans.

<sup>164</sup> §10103 of P.L. 111-148 adding §2709 to the Public Health Service Act.

<sup>165</sup> §1201 of P.L. 111-148 adding §2704 to the Public Health Service Act, as amended by §2301 of P.L. 111-152.

<sup>166</sup> §10101 of P.L. 111-148 adding §2718 to the Public Health Service Act. For more information about the medical loss ratio, see CRS Report R42735, *Medical Loss Ratio Requirements Under the Patient Protection and Affordable Care Act (ACA): Issues for Congress*, by Suzanne M. Kirchoff.

<sup>167</sup> OPM, "Medical Loss Ratio Rebates Under the Affordable Care Act," Benefits Administration Letter No. 12-205, August 21, 2012, at <http://www.opm.gov/retirement-services/publications-forms/benefits-administration-letters/2012/12-205.pdf>.

<sup>168</sup> §9003 of P.L. 111-148.

<sup>169</sup> §9004 of P.L. 111-148.

<sup>170</sup> §10902 of P.L. 111-148 as amended by §1403 of P.L. 111-152.

Since May 1, 2012, eligible Indian tribes, tribal organizations, and urban Indian organizations have been allowed to purchase FEHB for their tribal employees. The ACA required that the tribe or tribal organization pay the government's share of the premium, at a minimum, with the enrollee paying the remaining share. The act only allowed tribes and tribal organizations to purchase this coverage for employees; coverage is not available to retirees.<sup>171</sup>

The act imposed some administrative requirements on employers that affect federal agencies. For taxable years beginning after December 31, 2010, it required employers to provide the aggregate cost of applicable employer-sponsored coverage on an employee's W-2.<sup>172</sup> The requirement became mandatory in 2012.<sup>173</sup> Beginning in 2014, the act required insurers, self-insuring employers, government agencies, and employers, to file a return including the name of each individual for whom they provide minimum essential coverage, the number of months of coverage, and any other information required by the Secretary of HHS. The effective date of this requirement was delayed until 2015.<sup>174</sup>

The act generally specifies that the only health plans the federal government may make available to Members of Congress and certain congressional staff (with respect to their service as Members or staff) are either created under the ACA or offered through an exchange.<sup>175</sup> Beginning January 1, 2014, Members and designated congressional staff were no longer able to purchase FEHB plans as active employees; however, if they enroll in a health plan offered through a Small Business Health Options Program (SHOP) exchange, they remain eligible for an employer contribution toward coverage.<sup>176</sup> Members and designated congressional staff who are eligible for retirement are allowed to enroll in an FEHB plan upon retirement. For more details on the implementation of this provision, see CRS Report R43194, *Health Benefits for Members of Congress and Designated Congressional Staff*.

The act includes a number of provisions to raise revenues, which may have an impact on FEHB plans. Beginning in 2014, the ACA imposed an annual fee on health insurance plans based on their market share, which could affect most FEHB carriers.<sup>177</sup> Additionally, the act imposed a new Patient-Centered Outcomes Research Institute (PCORI) fee on insurers, which was imposed on FEHB plans for the first time in 2012 (and will end in 2019).<sup>178</sup> Starting in 2018, the act will impose a 40% excise tax on health insurers and health plan administrators for coverage that

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<sup>171</sup> §157 of the Indian Health Care Improvement Reauthorization and Extension Act of 2009 (S. 1790) as enacted by §10221(a) of P.L. 111-148.

<sup>172</sup> §9002 of P.L. 111-148.

<sup>173</sup> For more details, see Internal Revenue Service (IRS), "Interim Guidance on Informational Reporting to Employees of the Cost of Their Group Health Insurance Coverage," Notice 2012-9, at <http://www.irs.gov/pub/irs-drop/n-12-09.pdf>.

<sup>174</sup> IRS, "Transition Relief for 2014 Under §§6055 (§6055 Information Reporting), 6056 (§6056 Information Reporting) and 4980H (Employer Shared Responsibility Provisions)," Notice 2013-45, at [http://www.irs.gov/irb/2013-31\\_IRB/ar08.html](http://www.irs.gov/irb/2013-31_IRB/ar08.html).

<sup>175</sup> §1312(d)(3)(D) of P.L. 111-148.

<sup>176</sup> 5 C.F.R. §890.102(c).

<sup>177</sup> §9010 as amended by §10905 of P.L. 111-148, as amended by §1406 of P.L. 111-152.

<sup>178</sup> §6301 of P.L. 111-148. For more information about how the Patient-Centered Outcomes Research Institute fee is assessed on FEHB plans, see OPM, "Patient-Centered Outcomes Research Institute Fee," FEHB Program Carrier Letter No. 2013-03, March 11, 2013, at <http://www.opm.gov/healthcare-insurance/healthcare/carriers/2013/2013-03.pdf>.

exceeds certain thresholds.<sup>179</sup> The health insurance coverage subject to the excise tax includes the employer and employee premium payments for health insurance coverage (including self-insured plans), the premiums paid by the employee and the employer for dental and vision coverage (if this supplemental coverage is not part of a stand-alone package), and payments toward tax-advantaged health-related accounts such as FSAs, HSAs, HRAs, and MSAs. The thresholds are \$10,200 for single coverage and \$27,500 for family coverage, and they will be indexed to inflation in subsequent years.<sup>180</sup> The amount by which an individual's total health insurance coverage exceeds \$10,200 in 2018 (or \$27,500 for a family) will be subject to the 40% excise tax.

The ACA required the Director of OPM to enter into contracts with health insurance issuers to eventually offer at least two multistate plans (MSPs) through each exchange in each state (without regard to statutes requiring competitive bidding).<sup>181</sup> Such plans will provide individual or group coverage, in the case of small employers. While administering MSPs, the Director of OPM cannot reduce financial or personnel resources related to the administration of FEHB. Enrollees in an MSP will be treated as a separate risk pool from FEHB. The Director can establish separate units or offices within OPM to ensure that the administration of MSPs does not interfere with the administration of FEHB. The Director can appoint additional personnel to carry out activities under this section but must ensure the MSP program is separate from FEHB. Finally, FEHB plans are not required to offer an MSP.

### **Bipartisan Budget Act of 2013 (P.L. 113-67), December 26, 2013**

P.L. 113-67 provided that FEHB enrollees may select “self plus one” coverage in addition to individual and family coverage.<sup>182</sup> The government's share of premiums for self plus one coverage will be determined in the same way premiums for individual and family coverage are determined: OPM will find the weighted average premium of all plans in FEHB each year and pay either 72% of this average or 75% of any given plan's premium, whichever is smaller. For the first contract year in which the self plus one option is offered, OPM will determine the weighted average premium for self plus one coverage based on an actuarial analysis.

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<sup>179</sup> §9001 of P.L. 111-148, as amended by §10901, as amended by §1401 of P.L. 111-152.

<sup>180</sup> Coverage for retired individuals aged 55 to 64 and for workers engaged in high-risk professions will be subject to higher thresholds (\$11,850 single and \$30,950 families).

<sup>181</sup> §1334 (added by §10104) of P.L. 111-148. For more information about multistate plans, see CRS Report R42663, *Health Insurance Exchanges Under the Patient Protection and Affordable Care Act (ACA)*, by Bernadette Fernandez and Annie L. Mach.

<sup>182</sup> §706 of P.L. 113-67.

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